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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 670

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MAERAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTH-WESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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IN THE

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OCTOBER TERM, 1967

No.

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MAERAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

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CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTHWESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

The People of the State of Illinois on the relation of John Maeras, the Tax Collector for Madison County, Illinois, appeal from a judgment of the Supreme Court of Illinois which was entered on January 19, 1967, dismissing appeals from forty-six judgments of the Third Judicial

Circuit of Illinois, Madison County, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.[1] This Statement is also intended to include the material appropriate in a petition for certiorari. 28 U. S. C., §§ 1257 (3), 2103; **Flournoy v. Weiner, 321 U. S. 253, 263 (1944); Prudential Ins. Co. v. Cheek, 259 U. S. 530, 547 (1922).**

OPINIONS AND JUDGMENTS BELOW

The opinion of the Supreme Court of Illinois which accompanies the 1967 judgment below is reported at **36 Ill. 2d 585; 224 N. E. 2d 248 (1967)** and is printed as Appendix A at A-1 *infra*. The judgment is printed as Appendix B at A-5 *infra*.

A prototype of the forty-six, April 20, 1966, judgments of the trial court, which had been entered pursuant to mandate of the Supreme Court below, and which the Tax Collector thereafter appealed to the Supreme Court below is printed as Appendix C at A-6 *infra*. Issuance of the mandate followed the 1965 opinion reported at **33 Ill. 2d 88; 210 N. E. 2d 196 (1965)** and printed as Appendix D at A-11 *infra*. The 1965 judgment entered by the Supreme

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[1] Appellant filed this case during the October 1965 Term as No. 1046 on the Appellate Docket. The first appeal was from earlier judgments entered in 1965 by the Supreme Court of Illinois. The 1965 judgments, at the instance of the railroads, reversed earlier trial court judgments. In the first appeal, the railroads filed a Motion to Dismiss or Affirm and contended that the 1965 judgment of the Supreme Court of Illinois lacked finality. See 24 *infra*. They also contended that no substantial federal question was involved. On May 16, 1966, this Court dismissed the first appeal "for want of jurisdiction" and, treating the papers as a petition for certiorari, denied a writ. *384 U. S. 213 (1966), petition for rehearing denied, 384 U. S. 994 (1966).*

Court below is printed as Appendix E at A-25 *infra*. The trial court's 1964 opinion accompanying its 1964 judgments, which the Supreme Court of Illinois later reversed in 1965, is printed as Appendix F at A-26 *infra*.[2]

JURISDICTION

This appeal arises from proceedings originating in the Circuit Court of Madison County, Illinois. The People of the State of Illinois, on the relation of the County Tax Collector, seek to collect approximately one half of certain

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[2] It is a Statement of Reasons filed in the Record on Appeal to the Supreme Court of Illinois. Ill. Rev. Stat., ch. 110, § 101.36 (1965).

Appellant now has before this Court virtually all the Record before the trial court and the Supreme Court of Illinois which underlay the first appeal to this Court and which underlies this appeal:

Appeal from 1965 Judgment (On September 28, 1964, the Supreme Court below consolidated the 46 appeals. I Ill. Sup. Ct. Rec. 13.)

(a) 46 Short Records

(b) 4 Volumes of Testimony (I-IV Test.)

(c) A Deposition

(d) 12 Volumes of Exhibits (I-XII Exhibits)

(e) 3 Volumes of Ill. Sup. Ct. Record (I-III Ill. Sup. Ct. Rec.)

Appeal from 1967 Judgment (On June 20, 1966, the Supreme Court below ordered the 46 appeals docketed under one number. Ill. Sup. Ct. Rec. 2.)

(a) 46 Short Records

(b) 1 Volume of Ill. Sup. Ct. Record (Ill. Sup. Ct. Rec.)

Emphasis is added in this Statement unless otherwise noted.

The Record now at the bar of this Court contains comprehensive evidence concerning state assessment of railroad property in Illinois, 1933-1963, as well as evidence concerning state equalization of locally assessed property assessments in Illinois. See n. 4 at 4 *infra*.

ad valorem taxes charged against the railroads' properties in Madison County and paid under protest.[3] In Illinois the procedure to collect protested property taxes is prescribed by statute and is commonly known as a tax objection proceeding. Ill. Rev. Stat., ch. 120, §§ 482-824 (1963).[4]

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[3] Madison County is on the Mississippi River near St. Louis, Missouri and in 1962 contained the fourth largest assessed valuation of property among Illinois' 102 counties. The Chicago, Burlington & Quincy (CB&Q), New York Central (NYC) and Chicago and Eastern Illinois (C&EI) contest taxes extended for each of the six years, 1957-1962 (18 cases). The Chicago & Northwestern (C&NW) and Gulf, Mobile & Ohio (GM&O) contest taxes extended for each of the five years, 1958-1962 (10 cases). The Illinois Central (IC) and New York, Chicago & St. Louis (Nickel Plate) contest taxes extended for each of the four years, 1959-1962 (8 cases). The Pennsylvania (Pa.), Wabash (W.), Terminal Railroad Assoc. of St. Louis (TRRA), Illinois Terminal (IT) and Alton & Southern (AS) contest taxes extended for each of the two years, 1961-1962 (10 cases).

[4] Property, including public utility property, is generally assessed by local assessors in Illinois but most railroad property is state assessed by the Governor's appointee, the Director of Revenue, who is required by statute to discharge the duties of the Department of Revenue which, since 1946, include *equalization of locally assessed property at full value* by certification of appropriate multipliers to the 102 counties; and, prior to 1963, *assessment of railroad operating property at full value* with distribution of the assessments to the counties of the state. See Appendix G. at A-56-60 *infra*. The office of Director of Revenue and the Department of Revenue were created by the legislature in 1943. They assumed the duties, *inter alia*, of the three member Tax Commission which, also appointed by the Governor, had assessed railroad operating property, 1919-1942. The Director also assesses capital stock and private car line companies. Ill. Rev. Stat., ch. 120, §§ 559, 572, 372.2 (1965). For many years state-assessed taxpayers have had dual access to the state judiciary. First by appeal from the Director's assessment order to any appropriate trial court with direct appeal thereafter to the Supreme Court. Ill. Rev. Stat., ch. 120, §§ 619, 620 (1961). The parties usually are the railroad and the Department of Revenue and the Department is represented by the Attorney General. Ill. Rev. Stat., ch. 14, § 4 (3) (1961). *E. g., C. & NW v. Dept. of Rev.*, 6 Ill. 2d 278 (1955). Second, by a tax objection proceeding in any county in which the railroad owns property against which taxes have been billed. Any taxpayer may pay part of his annual county tax bill under protest to the County Collector who is the elected County Treasurer, a constitutional officer, serving in an ex-officio capacity pursuant to legislative mandate. Ill. Const.,

On January 19, 1967, the Supreme Court of Illinois refused to reconsider the federal questions decided in the first appeal to that Court (1965) and entered a judgment dismissing Appellant's appeals from the trial court's April 20, 1966, judgments. See A-5 *infra*. Appellant's Petition for Rehearing was denied on March 27, 1967. Notice of Appeal to this Court was filed on April 17, 1967. On June 5, 1967, the Supreme Court below extended the time during which Appellant might docket this appeal until and including October 2, 1967. Ill. Sup. Ct. Rec. 159. Jurisdiction of this Court to review the decision below is conferred by 28 U. S. C., § 1257 (2). The following decisions establish the jurisdiction of the Supreme Court to review the questions presented in this appeal:

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art. X, § 8 (1870); Ill. Rev. Stat., ch. 120, §§ 657, 671 (1961). The People of the State on the relation of the Collector subsequently apply to a trial court of record in the county for a judgment against the taxpayer's property in the county because of the protested taxes. After due notice the taxpayer may file a "defense," "specifying, in writing, the particular cause of the objection," and the statute provides that the Court hear and determine the matter "in a summary manner, without pleadings and shall pronounce judgment as the right of the case may be. . . ." The statute provides that a judgment adverse to the taxpayer shall be in the name of the "People of the State of Illinois." Ill. Rev. Stat., ch. 120, §§ 675, 706, 713, 715, 716 (1965). The parties are the People of the State ex rel. the Treasurer ex-officio the Collector and the taxpayer. The Supreme Court of Illinois has held that the "State of Illinois" is both "the nominal and real and substantial party" adverse to the taxpayer. *People ex rel. Murray v. City of St. Louis*, 297 Ill. 199, 202 (1921). The People and the Collector are usually represented by the chief county legal officer, the State's Attorney, also a constitutional officer. Ill. Rev. Stat., ch. 120, §§ 716, 697; ch. 14, § 5 (1961); Ill. Const., art. VI, § 22, as amended (1870). *E. g., People ex rel. Callahan v. GM&O*, 8 Ill. 2d 66 (1956). The State's Attorney has the same common law powers as the Attorney General has in Illinois as well as statutory powers and has the power to represent the People in matters affected with a public interest. See Note, "The Relationship Between the Attorney General and the State's Attorney in Illinois," U. Ill. L. F. 507 (1949). A tax objection case has been described as "a civil suit or proceeding for the collection of a debt. . . ." *People ex rel. Little v. St. Louis Merchant's Bridge Co.*, 282 Ill. 408, 412 (1918); *Keokuk Bridge Co. v. Salim*, 258 U. S. 122, 124-5 (1922).

A. Judicial action is state action.

Shelley v. Kraemer, 334 U. S. 1, 14 (1947).

B. Conflict between state constitutional and statutory provisions as applied and the federal constitution is within the scope of 28 U. S. C., § 1257 (2).

King Mfg. Co. v. City Council, 277 U. S. 100 (1927);
Ry. Express Agency v. Virginia, 282 U. S. 440, 443 (1930);
Torcaso v. Watkins, 367 U. S. 488-9, 496 (1961);
Adamson v. California, 332 U. S. 46, 48 (1947);
Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, 289 (1921);
Fiske v. Kansas, 274 U. S. 380, 385-6 (1927).

C. Fourteenth Amendment protects against arbitrary and discriminatory property taxation.

Hillsborough Township v. Cromwell, 326 U. S. 620, 623 (1945);
Walters v. City of St. Louis, 347 U. S. 231, 237 (1954);
Cumberland Coal Co. v. Board, 284 U. S. 23-25, 30-1 (1931);
L & N Rr. Co. v. Public Service Com. of Tennessee, et al., 249 F. Supp. 894 (M. D. Tenn. 1966), *appeal docketed,* No. 17180, 6th Cir., April 4, 1966 (oral argument on April 17, 1967);
Raymond, Treasurer of Cook County, Illinois v. Chicago Union Traction Co., 207 U. S. 20, 35, 42 (1907);
County of San Mateo v. So. Pac., 13 Fed. 722 (1882) (D. Cal.) (Field, J., on Circuit), *dismissed per stipulation,* 116 U. S. 138 (1885).

D. Fourteenth Amendment protects against arbitrary judicial determinations of a factual nature.

Minnesota Rate Cases, 230 U. S. 352, 465-66 (1913);
Missouri Rate Cases, 234 U. S. 474, 497-9 (1913);

Fiske v. Kansas, 274 U. S. 380, 385-6 (1927);
Schware v. Bd. of Bar Examiners, 353 U. S. 232, 246 (1957);
Washington v. U. S., 357 U. S. 348 (1957) (per curiam);
Thompson v. City of Louisville, 362 U. S. 199 (1960);
Garner v. Louisiana, 368 U. S. 157, 163, 170-1, 173-4 (1961);
Taylor v. Louisiana, 370 U. S. 154 (1962) (per curiam).

E. Duty of Court is to analyze facts intermingled with law in order to pass on federal question.

Fiske v. Kansas, 274 U. S. 380, 385-6 (1927);
Napue v. Illinois, 360 U. S. 264, 271-2 (1958);
Northern Pac. Ry. Co. v. North Dakota, 236 U. S. 585, 593 (1914);
Smith v. Illinois Bell Tel. Co., 282 U. S. 133, 149, 162, 164, 169 (1930);
Lindheimer v. Illinois Bell Tel. Co., 292 U. S. 151, 155, 158 (1934).

F. The 1967 judgment below is final; the 1965 judgment was not. (See 22-24 *infra.*)

Market Street Ry. Co. v. Com., 324 U. S. 548, 551 (1945);
Republic Natural Gas Co. v. Oklahoma, 334 U. S. 62, 68 (1948);
ROBERTSON & KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, § 27 (2d ed., Wolfson & Kurland 1951).

G. Jurisdiction exists to consider federal questions determined in earlier stage of litigation; state court application of *res adjudicata* or law of the case in second appeal below does not preclude review by this Court of federal questions decided in first appeal below. (See 22-24 *infra.*)

Mercer v. Theriot, 337 U. S. 152, 153-4 (1964) (per curiam);

Reece v. Georgia, 350 U. S. 85, 87 (1955);
Urie v. Thompson, 337 U. S. 167, 172-3 (1949);
Davis v. O'Hara, 266 U. S. 314, 321 (1924);
Louisiana Nav. Co. v. Oyster Com., 226 U. S. 99, 102 (1912);
Great Western Tel. Co. v. Burnham, 162 U. S. 339, 345 (1896).

CONSTITUTIONAL PROVISIONS INVOLVED

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct and not otherwise. . . ." Ill. Const. art. IX, § 1 (1870).[5]

". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." U. S. Const., amend. XIV, § 1.

STATUTORY PROVISIONS

Statutory enactments 1945-63 which define certain duties of the Director of Revenue, the chief administrative tax official in Illinois, are germane. The more significant provisions are printed as Appendix G at A-56 *infra*.

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[5] The "uniformity clause" applies only to property taxes. *E. g., Kochesperger v. Drake*, 167 Ill. 122 (1897). "Generally speaking, Illinois is known as having a constitutional limitation which requires the strictest degree of uniformity in the taxation of property." NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN TAXATION 125 (1959). ". . . the long tradition of rigid constitutional interpretation and a difficult constitution-amending process explain the persistence of the all-inclusive nature of the property tax in Illinois. . . ." NETZER, ECONOMICS OF THE PROPERTY TAX 154 (1966).

The Johnson Act

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state." 28 U. S. C., § 1341.

QUESTIONS PRESENTED

1. Is the uniformity clause in Article IX, Section 1 of the Illinois Constitution, or the statutes of Illinois, as interpreted and applied in this cause by the Supreme Court of Illinois, repugnant to the equal protection and due process clauses of the Fourteenth Amendment because property tax refunds to railroad taxpayers, for the period 1957-1962, ordered by the Supreme Court of Illinois have been based on (a) judicial determinations of value of non-railroad property which fully reflect post-World War II inflation and (b) judicial determinations of value of railroad property which arbitrarily and discriminatively ignore post-World War II inflation and property acquisitions—thereby shifting a significantly excessive and discriminatory share of the property tax burden from railroad to non-railroad taxpayers?

2. Has the Supreme Court of Illinois violated the equal protection and due process clauses of the Fourteenth Amendment by ordering property tax refunds to railroad taxpayers for the period 1957-1962 predicated upon (a) arbitrarily and discriminatively deflated judicial determinations of value of railroad property which eliminate the influence of post-World War II inflation and property acquisitions and (b) judicial determinations of value of non-railroad property which fully reflect post-World War II inflation—thereby shifting a significantly excessive and discriminatory share of the property tax burden from railroad to non-railroad taxpayers?

STATEMENT

In late 1958 twelve railroads filed written objections to the People's application for judgment and sale against their properties in Madison County, Illinois, because of property taxes paid under protest by the railroads for the year 1957. They filed similar objections each year thereafter through 1963 for the tax years 1958, 1959, 1960, 1961 and 1962. By 1962, several millions were in the protest fund. The trial before the Circuit Court of Madison County in 1964 involving most of these objections culminated in judgments entered in August, 1964, ordering refunds of about one-half of the protested taxes. The objections alleged that the railroads' taxes were excessive because Illinois' Director of Revenue had failed, in violation of statute, to certify multipliers to Madison County which increased the assessments of locally assessed property to an amount reflecting the **full value** of such property and at the same time, in obedience to statute, had assessed state-wide railroad properties in amounts equal to their **full value**, then distributing an appropriate portion of those state-wide railroad property assessments to Madison County for inclusion in the County tax books. The Director's pertinent statutory duties are printed as Appendix G at A-56-60 *infra*. In Madison County and throughout Illinois, state-assessed railroad property had comprised about four percent of the tax base. If locally assessed property in Madison County had been increased to (or "equalized" at) **full value** by the Director, as statute required, the railroads remonstrated, the tax rates, derived each year by dividing the county's property tax base into the tax levies adopted by the various units of local government including the public schools, would have been approximately one-half the rates actually extended against tax base property. In short, the railroads claimed their taxes were about twice as high as they should have

been, because their property was assessed and taxed at its **full value**, while other property in the county was assessed and taxed at 50% of its full value.[6]

Nine of the Appellee railroads alleged in their objections that the Director of Revenue had violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution by administering his statutory duties in such a manner as to create discriminatory levels of assessment between state-equalized locally assessed property on the one hand and state-assessed railroad property on the other. (It is impossible to derive a "level of assessment" expressed in percentage without a preliminary determination of the value of the property to which the assessment figure can be related.) More precisely, the railroads asserted that the Director's equalization multipliers certified to Madison County allowed debased local assessments to remain far below **full value** (as inflation increased) while the Director formulated his assessments of railroad property equal to

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[6] In the early and mid-1950's two railroads had unsuccessfully asserted that their taxes were too high because their state-wide assessments were excessive in violation of the statutory standard of full value due to the Director's use of reproduction cost (which reflects inflation) as one element of value. *C&NW v. Dept. of Rev.*, 6 Ill. 2d 278 (1955) (Schaefer, J.), *cert. denied* 351 U. S. 950 (1956), *rehearing denied*, 352 U. S. 859 (1956), and *CB&Q v. Dept. of Rev.*, 17 Ill. 2d 376 (1959) (Schaefer, J.). Local government expenditures and property tax levies, which in Illinois support only local government and provide most of local government finance, had increased much more rapidly than had assessments. The average property tax rate in Illinois had increased from 2.39 per $100.00 equalized assessed valuation in 1948 to 3.79 in 1960. Report of the Commission on Revenue of the State of Illinois 456 (1963) (data from Property Tax Division of the Department of Revenue); in 1962, the average rate jumped to 4.73. Peo. Ex. 19a; I Exhibits. Assessed valuations in Illinois moved from $20,760,692,207 in 1946 to $23,133,067,629 in 1950 to $27,601,900,590 in 1955 to $34,860,116,397 in 1961, *i. e.*, 67.9% from 1946 to 1961 as property taxes increased during the same period from $416,896,010 to $1,400,303,027. Peo. Ex. 20E. I Exhibits.

full value. Of these nine Appellees eight also alleged that the Director of Revenue's conduct violated the uniformity clause of the Illinois Constitution, Art. IX, § 1. Three other Appellees, CE&I, Pa. and CB&Q, with one exception, never particularized the legal basis of their allegation of discriminatory taxation by the administrative process. The exception was the CB&Q which, with regard to tax year 1959, on January 23, 1961, alleged that the Director had violated the uniformity clause of the Illinois Constitution. The text of each objection is in the Record. No other pleadings are provided for in a tax objection case.

At the trial in 1964 the railroads introduced "sales ratio" data **based on inflation-driven sales prices of real estate,** *i. e.*, assessments related to sales prices, compiled by the Director's staff (Property Tax Division of the Department of Revenue) to prove that the **full value** of locally assessed property in Madison County was generally twice as high as the assessments of this property even after application of the multipliers which had been certified by the Director to Madison County (after 1957, a multiplier of 1).[7] The railroads also introduced state administrative data which **eliminated post-World War II inflation** and also net property acquisitions by the railroads to prove that the full value of their state-assessed property was equal to the Director's assessments,

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[7] There appeared in the United States in 1957 statistical analyses of taxable property values based upon studies of real estate transfers. These studies, permitting precise derivation of levels of assessment for real estate, captured the inflationary movement of the economy. See V U. S. BUREAU OF THE CENSUS, CENSUS OF GOVERNMENTS: 1957, TAXABLE PROPERTY VALUES IN THE U. S., Table 2, p. 23; also, II U. S. BUREAU OF THE CENSUS, CENSUS OF GOVERNMENTS: 1962, TAXABLE PROPERTY VALUES IN THE U. S., Table 2. These studies proved "deep underassessment on virtually a nationwide basis." I THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 43 (1963) (ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS).

not higher.[8] Appellant introduced evidence, including the data of the Director's staff, to prove that the Director's railroad assessments had been held level by the elimination of price level increases and net property acquisitions and were purposely formulated at **less than full value** in response to constitutional mandates of uniformity which were pertinent because of the Director's failure after 1946, in the face of unprecedented and continuing inflation, to equalize locally assessed property in Madison County and throughout the state at 100% of value.[9] Crucial data is condensed in graph form, Appendix H. at A-61 *infra* and by numeral display at A-61 *infra*.

In 1964, the trial court entered judgments ordering sizeable refunds to each railroad for each year. These judg-

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[8] While the Bureau of Census studies established levels of assessment for locally assessed real estate, they did not include value determinations for railroad property and therefore did not estimate levels of assessment for railroad property. The total railroad property assessment in the United States in 1940 was about 7 billion. See separate statement of C. E. Childe, one of a two member BOARD ON CARRIER TAXATION, H. Doc. 160 at 8-9, 79th Cong., 1st Sess. (1944). In 1961, total railroad property assessments in the United States were also about 7 billion. II CENSUS OF GOVERNMENTS: 1962, TAXABLE PROPERTY VALUES, 28-29, 156-160 (Tables 2, 25). State-assessed railroad property assessments totaled $6,427,000,000 and Appellant has increased the figure to 7 billion to allow for an estimate of assessments of locally assessed railroad property.

[9] See *Del., L&W. Rr. Co. v. Neeld*, 130 A. 2d 6, 10-1, 14 (1957) (N. J.). The pent up demand for goods, coupled with high savings and short supply, brought to the post-World War II economy a startling escalation of the price level which, with the added impetus given by the Korean War 1950-52 and other forces, continued through most of the fifties before abating somewhat in the late 1950's and early 1960's. For example, the Building Cost Index of the Engineering News Record rose from 242.2 to 356.2, or about 45%, between 1946 and 1950. Weil, "Property Tax Equalization in Illinois," National Tax Journal, June, 1953. Peo. Ex. 57, p. 164, n. 13. "By inflation we mean a time of generally rising prices for commodities and factors of production." SAMUELSON, ECONOMICS—AN INTRODUCTORY ANALYSIS 268 (6th ed. 1964). Price is a key determinant of property value. See, *e. g.*, TAUSSIG, PRINCIPLES OF ECONOMICS 111-13 (1922).

ments were necessarily predicated upon determinations by the trial court of full value in each year for each railroad's property and a determination by the trial court of the full value in each year for locally assessed property. To determine the value of each railroad's property in Madison County, the trial court had to first determine the value of each railroad's property throughout Illinois. The trial court upheld the railroads' contention about the level of assessment of locally assessed property in Madison County, relying (as the Director of Revenue had not) on the Director's staff's data based on inflated price levels, to determine value; and relating the actual equalized assessments to judicially determined full value based on inflated prices, the trial court determined that the levels of assessment for non-railroad property in Madison County for 1957-1962 ranged from 48.14% to 50%, *i. e.*, the equalized assessments of locally assessed property were 48.14% to 50% of the full value of that property. The court's determinations of full value for each railroad's state-assessed property were based on data placed on "assessment data sheets" by the Director's staff from information supplied by the railroads in annual returns, and from data obtained from the Bureau of Valuation of the Interstate Commerce Commission, compiled pursuant to Section 19a as amended of the Interstate Commerce Act, 49 U. S. C., § 19a. For each railroad, the Director's staff had determined system figures for (a) capitalized income, (b) stock and debt, and (c) reproduction cost less depreciation and obsolescence and had allocated a portion of each system figure into Illinois, explicitly reducing the ICC cost figure before **averaging** the three elements of value.

More specifically, the trial court determined the full value of railroad property by employing a valuation formula as it had been applied during the 1940's and again in 1963 by the Director, **averaging** the three elements of value traditionally utilized in Illinois: capital-

ized earnings, stock and debt value, and reproduction cost less depreciation and obsolescence.[10] Relating the Director's statewide assessments for each railroad's property for each year to judicially determined statewide values of each Appellee's property, the trial court derived levels of assessment substantially below 100%, yet higher than those for locally assessed property. See A-42-3 *infra*. In its value determinations for Appellees' properties the trial court did not employ certain increasingly large reductions from the average of the three traditional elements of value made by the administrator in formulating the assessments. These so-called "judgment factor" reductions, unsupported by data, had grown to huge dimensions during the 1950's as railroad assessments remained essentially level despite sustained inflation and property acquisitions after World War II.[11]

These reductions, considered in context, are the strongest type of evidence of an administrative technique by which the Director eliminated the influence of inflation from the assessments, at the same time that he ignored

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[10] The cost of property, particularly during periods of large capital expenditure, reflects inflation, as sales ratio studies of real estate reflect inflation. The administrative formula gave only one-third weighting to changes in the price level. Sales ratio studies of real estate utilized by the Director's staff and the Bureau of the Census give 100% weighting to changes in price level. During the 1950's reproduction cost figures reflecting inflation and net property acquisitions shot upward, despite the ICC's staff's use of "average" prices in place of "spot" prices, and caused the formulaic averages to increase substantially. See A-61 *infra*. The Illinois formula is used in other states. See n. 15 at 29-30 *infra*.

[11] Of the sixty or so railroads in Illinois, the twelve involved in this case, accounting for about 60% of the industry's assessment in Illinois, including the largest railroads in Illinois, had a combined formulaic average in 1951 of $684,217,000, which increased to $816,018,000 in 1961. Their combined "judgment factor" reductions in 1951 was $72,462,000 and in 1961 it was $235,841,000. By 1951, the "judgment factor" reductions were about 11% of the formulaic averages; in 1961, about 29%. Administration data for the years 1946-1950 inclusive is missing. See Appendix H. at A-61 *infra*.

inflation in certifying multipliers to the counties for equalization of locally assessed property. See Appendix H. at A-61 *infra*. The Record establishes in this connection a cardinal consequence of post-World War II inflation on *ad valorem* tax assessments by state officials of railroad property in Illinois: obscurant and arbitrary administrative integration of the distinct functions of valuation and equalization into the single act of assessment. See A-61 *infra*.

The trial court based its determinations of full value of railroad property on a method which gave **only** one-third weighting to inflation and property acquisitions and consequently the trial court found that the levels of assessment for Appellees' state-assessed property ranged from 58-85% of full value, 1957-62. See Appendix F. at A-42-3 *infra*. The effect was to decrease substantially the amount of refunds which 100% levels of assessment of railroad property, inflation ignored, would have required. The trial court's determinations reduced the size of the alleged discrimination and claimed refunds substantially.

Having determined that the difference in the levels of assessment between railroad property and non-railroad property warranted relief for the railroads, the trial court ordered that the refunds be computed according to the mandate of **People ex rel. Hillison v. CB&Q, 22 Ill. 2d 88, 96-99 (1961)**, *i. e.*, determine what the taxes of the railroads would have been if all property in Madison County had been assessed at its full value and subtract those amounts from the taxes actually billed to the railroads, the remainders constituting the refund amounts. Appendix F. at A-47-60 *infra*. However, the trial court's judgments did not contain the results of computing the refunds, nor did they prescribe exactly the method of computing the refunds. The railroads immediately appealed to the Supreme Court of Illinois to challenge the judicial deter-

minations that the values of their properties were in excess of the Director's assessments.

The trial court's opinion concluded that the economic theory, explained in the Record, underlying the Illinois valuation formula for railroad property, as developed and refined by highly qualified economists who, from 1933-1949, were in the employ of the State of Illinois, was sound; and the "judgment factor" reductions from the formulaic averages, were in terms of value, arbitrary items used by the administrator to eliminate the influence of inflation which had developed since World War II. The purpose of the Director in making the reductions was proper and legal: he was complying with constitutional duties of uniformity activated by the failure of local assessors to increase local assessments in the face of inflation, and by his own disregard of inflation in equalizing local assessments of non-railroad property. The trial court rejected the railroads' argument that the "judgment factors" were elements of value. To use the "judgment factor" reductions as elements of value for the purpose of judicially enforced equalization would be arbitrary and discriminatory, particularly in view of prior Supreme Court of Illinois precedents requiring exclusive reliance on the inflated price level in judicial determinations of the value of locally assessed property for the same purpose. See Appendix F. at A-39-40 *infra*. Following certain decisions of the Supreme Court of Illinois 1961-64, the trial court verbalized the basis of relief as "constructive fraud."[12]

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[12] On limited Records involving one railroad for one or several tax years, the Supreme Court of Illinois had granted relief in four cases arising in other counties. In these cases the Court's articulated rationale was "constructive fraud," a concept which developed in Illinois jurisprudence over many decades to preclude, not to justify, judicial interference with administration of the property tax. People's Second Brief in the first appeal to the court below contains a corroborative survey of the pertinent Illinois law, 1859-1959. II Ill. Sup. Ct. Rec. 88. Thus in *People*

The Tax Collector did not appeal the trial court's 1964 judgments. The judicial determinations of value of locally assessed property, grounded in the evidence and economic theory, properly reflected the marked inflation of the post-World War II period. The judicial determinations of value for railroad property were also grounded in data and in economic theory. Inflation and property acquisitions had been accorded no more than one-third weight. Appellant did not question the trial court's large dilution of inflation in the valuation of railroad property, the dilution inherent in averaging the cost factor with two other factors which do not reflect price level changes.

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ex rel. Hillison v. CB&Q, 22 Ill. 2d 88 (1961) (tax year 1958); *People ex rel. Kohorst v. GM&O*, 22 Ill. 2d 104 (1961) (tax year 1957); *People ex rel. Wenzel v. C&NW*, 28 Ill. 2d 205 (1963) (tax years 1956-59) (railroad property valuation not at issue); and *People ex rel. Enrietta v. GM&O*, 29 Ill. 2d 605 (1964) (tax year 1959), the Supreme Court of Illinois did not discuss the constitutional nature of the litigation or acknowledge that it was determining values. Rather, the court erroneously premised that it was directly reviewing railroad assessments. The effect of the oversight was compounded when, in purporting to review railroad assessments, the Court overlooked the presumption of compliance by the Director with constitutional mandates arising from the railroads' contemporaneous proof that locally assessed property had been equalized by him at far less than the statutory standard of full value based exclusively on inflated prices. The Director has always been under a constitutional duty to debase railroad assessments when locally assessed property assessments are equalized at less than full value—even if to do so he must violate a statute. *People ex rel. v. I. C. Rr. Co.*, 355 Ill. 601, 606 (1934); *Bistor v. McDonough*, 348 Ill. 624, 632 (1932); *People ex rel. v. CB&Q*, 300 Ill. 399, 404 (1921); *People ex rel. v. I. C. Rr. Co.*, 273 Ill. 220, 244-49 (1916); *Law v. People ex rel.* 87 Ill. 385, 405-06 (1877); *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441, 446 (1923). In fact, until 1946 the Director, and the Tax Commission before him, in the face of debased local assessments, without significant inflation, had violated the statute which, since 1927, had required full value assessments of railroad property by explicitly equalizing railroad assessments. See, *e. g.*, Hodes, "The Assessment of Railroad Property in Illinois," 35 *Ill. L. Rev.* 766 (1941). "Constitutionality of State Equalization of Property Assessments in Illinois," 17 *U. of Chi. L. Rev.* 93 (1949); Note, "Equalization of Railroad Assessments in Illinois," 35 *Ill. L. Rev.* 766 (1941). Prior to 1946 state officers were not required to equalize local assessments at full value.

The railroads asserted in their Notices of Appeal to the Supreme Court below that the trial court's judgments, to the extent that they rested on the value determinations of railroad property, violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution as well as the uniformity clause of the Illinois Constitution. Vol. I, Rr. Abstract 151, I Ill. Sup. Ct. Rec. 17. The railroads' point was that in determining values for their properties the trial court had not utilized the administrative "judgment factor" reductions from the formulaic averages. See Appendix H at A-61 *infra.* In other words, the railroads appealed because the trial court had given some weight to inflation and property acquisitions in determining the value of their property. Defending the trial court's judgments in the Supreme Court of Illinois, as he had defended the Director of Revenue in the trial court in an effort to collect the public revenue due, the Tax Collector responded to two Briefs filed by the railroads. The railroads' principal brief at 16 reasserted that the trial court's judgments violated the equal protection and due process clauses of the Fourteenth Amendment and also the due process and uniformity clauses of the Illinois Constitution, with quotation from the uniformity clause of the State Constitution set forth at 6. I Ill. Sup. Ct. Rec. 22.

The Tax Collector's briefs argued that the trial court had correctly applied state and federal constitutional requirements of uniformity, specifically mentioning both the Fourteenth Amendment and the uniformity clause of the Illinois Constitution. The Tax Collector argued that utilization of the "judgment factor" reductions by the Judiciary would violate the due process and equal protection clauses of the Fourteenth Amendment, and, if the use of those factors were based upon the uniformity clause of the Illinois Constitution, the Court would be enforcing that clause in a manner repugnant to the due process and

equal protection clauses of the Fourteenth Amendment. Peo. Brief at pp. 9, 11, 74, 75, 77, 81, 87, 90; II Ill. Sup. Ct. Rec. 72. It was also argued that there was no data in the record or elsewhere to support the "judgment factor" reductions and that use of them by the Judiciary as elements of value, in response to obvious rationalization by one witness, would be arbitrary. Moreover it was argued that their use as elements of value would be discriminatory because the effect of the "judgment factors" in the judicial valuation process would be to eliminate arbitrarily the influence of inflation and net property acquisitions. Employment of the "judgment factors" would result in the elimination of the inflating influence in the formulaic averages of increases due to price rises and also net property acquisitions, which increases were coincidentally so great that their elimination would destroy the influence of the cost factor used in the Illinois formula for finding value. See Peo. Second Brief 59-60, 46-53; II Ill. Sup. Ct. Rec. 88. It was urged that unfairness would result, because the value of state-assessed railroad property would in this manner be judicially determined for the purpose of enforcing uniformity mandates for the property tax; and the value of locally assessed property, the Supreme Court of Illinois had previously held, must be based on sharply and steeply inflated prices. Moreover, use of the "judgment factor" as an element of value in some cases would produce value substantially less than the average of the capitalized income and stock and debt factors. The railroads filed a reply Brief which quoted from some cases based upon state and federal constitutional mandates. Rr. Reply Brief at pp. 44-45; II Ill. Sup. Ct. Rec. 84. With leave of Court the People filed a second brief in response to the reply Brief which had been filed after oral argument. Appellant referred to the constitutional provisions pertinent to arbitrary and discriminatory taxation and argued that the trial court would

have violated constitutional provisions if it had adopted the railroads' arguments. Peo. Second Brief at pp. 2, 4, 5, 20-30, 39, 16-B, 17-B; II Ill. Sup. Ct. Rec. 88.

In its 1965 decision the Supreme Court of Illinois reversed the trial court's judgments and mandated the use of the "judgment factor" reductions as elements of value and ordered that the trial court redetermine the values of Appellees' property by reducing the factually-based formulaic averages accordingly. Industry-wide railroad property values thus implied for 1957-1962 were lower than the valuations in 1946 when railroad property was first assessed at full value pursuant to new legislation, except that for 1957 the total valuation was 1.2% higher than the 1946 valuation. See n. 1, Appendix H at A-61 *infra*.

The Court mandated refunds based upon 100% levels of assessment for Appellees' property, with the levels of assessment of locally assessed property already judicially determined at about 50%. The opinion did not define or discuss the constitutional questions, and it described the Tax Collector and the People as criticizing the Directors for failure to assess railroad property at its full value, although the People in fact were defending the Director's actions with regard to railroad property assessments as a fair and commendable discharge of constitutional duty. Writing in terms of "constructive fraud," the Supreme Court below issued an opinion which contained important statements unsupported by the Record.[13]

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[13] For example, the Court below stated that the Director certified railroad property assessments to the county as "full value" assessments. The certifications are in the Record and they state nothing about value. Compare Appendix D at A-23 *infra* with pp. 12-15 of Vol. II of the Railroads' Abstract and with People's Second Brief at p. 53 and with p. 15 of the People's Petition for Rehearing. I Ill. Sup. Ct. Rec. 18; II Ill. Sup. Ct. Rec. 88, 219. Indeed, the Director's annual publication notices were ambiguous, and the Director had never used the statutory words "fair cash value" in reference to railroad property assessments. The Court's opinion stated that People's expert witness, economist and property tax expert, Professor Leo Cohen, did not testify that railroad prop-

Knowing that the Record contained detailed evidence never before presented to the Supreme Court of Illinois, and having invited that Court's attention to the issues of state and federal constitutional import, we were surprised by the Court's decision and articulations. We filed a Petition for Rehearing contending that the Supreme Court's judgments were arbitrary and discriminatory and had applied the uniformity clause of the Illinois Constitution repugnantly to the due process and equal protection clauses of the Federal Constitution and had violated rights guaranteed to the taxpayers by the due process and equal protection clauses of the Fourteenth Amendment. Peo. Pet. for Rehearing at 5, 7, 9, 42, 43, 28-35; I Ill. Sup. Ct. Rec. 219. The Supreme Court denied the Petition without elaboration. III Ill. Sup. Ct. Rec. 220.

Subsequent to the decision of the Supreme Court of Illinois, mandates were filed in the trial court on November 2, 1965, and the railroads submitted final orders to be entered pursuant to mandate. Ill. Sup. Ct. Rec. 7. There was controversy between the parties concerning the method of computing refunds utilized by the railroads in the proposed orders. On April 20, 1966, the Tax Collector filed a statement with the trial court, waiving objections to the method of refund computation, but specifically asserted

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erty assessments were less than full value. Yet that witness explicitly stated the contrary. Compare Appendix D at A-18 *infra* with R. 1576-82 of Vol. III Test.; Appendix D at A-39 *infra* and the People's Additional Abstract at 97. II Ill. Sup. Ct. Rec. 76, and People's Petition for Rehearing at 12, II Ill. Sup. Ct. Rec. 219.

The changing nature of the obscure and inconsistent rationalizations of the "judgment factor" in five Records to reach the Supreme Court of Illinois after 1954 is traced in Appendix E to People's Brief in the Court below. II Ill. Sup. Ct. Rec. 72. Moreover, no one in the cases at bar testified about the value of nine of the twelve Appellees' property except Mr. Broley Travis of California, a retired administrator turned consultant, who was unfamiliar with them and simply eliminated price level changes (the cost factor) in looking at Rr. Ex. 77 which brought together in three trend lines all the data for all twelve railroads. People's Pet. for Rehearing 14-15, II Ill. Sup. Ct. Rec. 219.

that the mandates and the judgments of the Supreme Court of Illinois underlying those mandates were invalid because they violated the uniformity clause of the Illinois Constitution and the Fourteenth Amendment to the United States Constitution. See **Urie v. Thompson, 337 U. S. 163, 172-3 (1949).** This statement concluded,

> "Applicant [Tax Collector] intends to file a Notice of Appeal in this case to the Supreme Court of Illinois so that should the U. S. Supreme Court conclude that the judgments now appealed to that Court [384 U. S. 213 (May 16, 1966)] are not 'final' under the pertinent federal statute, new judgments of the Supreme Court of Illinois can be obtained and another appeal taken to the U. S. Supreme Court presenting only those questions now presented in No. 1046 in that Court." Ill. Sup. Ct. Rec. 80 (3-4).

Subsequent to the filing of this statement, the trial court, on the same date, entered new judgments implementing the mandates of the Supreme Court of Illinois. The new judgments, based on 100% levels of assessment for railroad property and the lower levels of assessment for non-railroad property, contain precise dollar amounts of refund and reveal the method of computation. (See the Short Records filed in the Supreme Court below on June 20, 1966.)

On appeal to the Supreme Court of Illinois from the April 20, 1966, judgments, the Tax Collector presented and argued only the constitutional points and sought reversal. Ill. Sup. Ct. Rec. 82. The railroads argued that the points were foreclosed by the doctrines of *res adjudicata* and law of the case. Ill. Sup. Ct. Rec. 100. **In its opinion filed on January 19, 1967, the Supreme Court of Illinois stated that the action of the Court in its June, 1965, decision did not violate the uniformity clause of the Illinois Constitution and that the uniformity clause as applied**

did not violate the Fourteenth Amendment, nor was the Fourteenth Amendment in any way violated and that these points had been decided in the 1965 decision. See Appendix A at A-2-3 *infra*.

In the former appeal to this Court taken by the Appellant from the 1965 judgment of the Supreme Court below, the railroads contended that the 1965 judgment lacked finality because it had ordered the cause remanded for computation of refunds. The railroads then represented to this Court: "A substantial and fundamental dispute between the parties has existed . . . regarding the proper method to be used in determining the amounts of protested taxes to be refunded . . . Considering the issues involved in this dispute, a federal question may evolve if the trial court accepts the levy theory and further appeals to the Illinois Supreme Court and possibly this Court will ensue." See 324 U. S. 213 (1966) (Appellees' Motion to Dismiss or Affirm 21-22). The railroads cited Republic Natural Gas Co. v. Oklahoma, 334 U. S. 62, 68 (1948) to support their finality argument. There was considerable merit to the point, and this Court dismissed the first appeal "for want of jurisdiction."

The recent judgment of the Supreme Court below now appealed to this Court is surely final. The only points of dispute remaining between the parties are those now presented. There remains nothing more of consequence for the Illinois judiciary to do in the absence of action by this Court. Appeal from the 1967 judgment properly presents to this Court the federal questions decided in the first appeal. See the cases cited under "G" in the section on "Jurisdiction" at 7-8 *supra*.

THE QUESTIONS ARE SUBSTANTIAL

The state action challenged here as violative of the Fourteenth Amendment is judicial action. That judicial action is on a constitutional level. It interferes with the

administration of the property tax by the chief administrative official duly appointed by the Governor pursuant to duly enacted legislation based upon Art. IX, § 1 of the Illinois Constitution. The only legal basis for granting relief for **discrimination** in the administration of the property tax is constitutional in nature. The basis of the relief granted the railroads by the Supreme Court of Illinois is either the uniformity clause of the Illinois Constitution or the Fourteenth Amendment, or both. If the basis is the state constitutional provision, it is clear that this Court's appeal jurisdiction is involved. Since "statute" in 28 U. S. C., § 1257 (2) has long been interpreted to include constitutional provisions, there is no reason why applications of such provisions valid on their face are any less within the scope of § 1257 (2) than application of legislative enactments valid on their face. See the pertinent cases cited at 6 *supra*. If the decision below is based on the state uniformity clause, we submit that the Supreme Court below has interpreted and applied the state uniformity clause repugnantly to the Fourteenth Amendment. If, on the other hand, the basis of the decision below is the Fourteenth Amendment, the Court's certiorari jurisdiction is invoked. We submit that the basis of the decision below is the uniformity clause of the Illinois Constitution. See the statement of Mr. Justice Schaefer in **C. B. & Q. v. Department of Revenue, 17 Ill. 2d 376, 390 (1959)**, which specified the state uniformity clause as the legal basis of the railroads' position on alleged discrimination. In the Court below Appellant, at successive stages of the litigation, made the point that the action of the Supreme Court below was violative of the uniformity clause of the Illinois Constitution. The Supreme Court below rejected the point. Appellant, at successive stages of the litigation, made the point that the uniformity clause as applied was violative of the Fourteenth Amendment. The point was rejected. See, *e. g.*, A-2-3 *infra*.

1. The State Action Challenged Here Conflicts With Decisions of This Court Which Interpret the Fourteenth Amendment to Prohibit Arbitrary and Discriminatory Property Taxation.[14]

There are two methods by which the burden of the property tax may be unfairly spread among the tax-

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[14] In 1907, at the instance of Illinois utility taxpayers, this Court announced: "The claim that the action of the State Board of Equalization [Illinois] in making the assessment . . . would violate the provisions of the Fourteenth Amendment . . . by taking property of the appellee without due process of law, and by failing to give it equal protection of the laws, constitutes a Federal question *beyond all controversy.*" *Raymond, Treasurer of Cook County, Illinois v. Chicago Union Traction Co.*, 207 U. S. 20, 35, 42 (1907) (tax year 1900). Subsequent confirmation of limitation was elicited from this Court by railroad taxpayers in *Greene v. L&I Rr.*, 244 U. S. 499, 502 (1917); *Southern Rr. v. Watts*, 260 U. S. 519, 521, 525-6 (1923); *Chicago Rr. v. Kendall*, 266 U. S. 94, 95 (1924); *Nashville C&St.-L. Rr. v. Browning*, 310 U. S. 362 (1940). The limitations have also been confirmed at the instance of non-railroad taxpayers. *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 353 (1918); *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441, 446-7 (1924); *Cumberland Coal Co. v. Board*, 284 U. S. 23, 24-5 (1931); *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 245 (1931); *Hillsborough v. Cromwell*, 326 U. S. 620, 623 (1945); *Walters v. City of St. Louis*, 374 U. S. 231, 237 (1954). As Mr. Justice Fortas recently observed, "Its [the Fourteenth Amendment's] sole office was to impede state regulation of railroads or other corporations. . . . See Stampp, The Era of Reconstruction." *United States v. Price*, 34 U. S. L. Week, 4313, 4317 n. 9 (U. S. March 28, 1966). See also *Graham, Builded Better Than They Knew: Part 1: The Framers, the Railroads and the Fourteenth Amendment*, 17 *U. of Pitt. Law Rev.* 537 (1956). SWISHER, STEPHEN J. FIELD 250-61, 415-16 (Archon Books ed. 1963).

The interpretation of the Fourteenth Amendment as a proscription of property tax discrimination resulted from railroad argument. Leading up to the 1907 declaration by this Court that the interpretation was "beyond all controversy" was a line of cases in which the railroads urged the application of the Fourteenth Amendment against state action. *County of San Mateo v. So. Pac. Rr.*, 13 Fed. 722, 733-38 (Field, Circuit Justice, 1882), *dismissed per stipulation*, 116 U. S. 138 (1885); *County of Santa Clara v. So. Pac. Rr.*, 18 Fed. 385, 390 (Field, Circuit Justice, 1883), *aff'd on other grounds*, 118 U. S. 394 (1886); *Bell's Gap Rr. v. Pennsylvania*, 134 U. S. 232 (1890); *Railroad and Telephone Com-*

payers. The first method, more easily discernible, is through application of arbitrarily different rates of tax to the properties in the tax base. The second method, the one challenged in this litigation, is to utilize arbitrarily disparate valuation methodologies which produce too low or too high valuation figures. Here, the Supreme Court below, in enforcing equalization and in measuring discrimination to determine damages, has mandated that post-World War II inflation and property acquisitions shall be eliminated in determining the value of railroad property, thereby deflating the valuation of railroad property, although non-railroad property is to be valued according to inflated sales prices. The amount of discrimination resulting from the administrative process, as well as the amount of refunds, have consequently been doubled by judicial action. The result is, in view of the marked inflation and capital investment in railroad property which has taken place since 1946, to shift an inordinate amount of the tax burden from railroad taxpayers to non-railroad taxpayers. The Record establishes clearly that as soon as the state administrator realized in the late 1940's that inflation would not subside, he responded to inflation uniformly. He and his successors disregarded the effect of the inflating price level both in equalizing locally assessed property and in assessing railroad property. Later, at the instance of the railroads, the Supreme Court of Illinois applied the state uniformity clause in such a fashion as to tie the value of locally assessed property to the inflation

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panies v. Board of Equalizers, 85 Fed. 302, 317 (C. C. M. D. Tenn. 1897) (tax biennium 1897-99); *Nashville & St. L. Rr. v. Taylor, Governor*, 86 Fed. 168, 179 (C. C. M. D. Tenn. 1898) (tax biennium 1897-9); *cf. Taylor, Governor v. L. & N. Rr.*, 88 Fed. 350, 362 (6th Cir. 1898) (Taft, J.); *Louisville Trust Co. v. Stone*, 107 Fed. 305, 306 (6th Cir. 1901) (Day, J.); *Coulter v. L. & N. Rr.*, 196 U. S. 599, 608 (1905) (tax year 1902). "From the low level of 1897 they [prices] rose to 21 per cent. to 1900 . . . In the Bureau chart the 1913 prices are taken as the datum line (100). As compared with them the 1897 level was 67, the 1900 level 81." *Southwestern Bell Tel. Co. v. Mo. Pub. Serv. Com.*, 262 U. S. 276, 289, 303 n. 16 (1923) (Brandeis, J., dissenting).

balloon and severed the inflation balloon from the value of railroad property. The equipoise achieved by the administrative process between the two categories of property, each resting on one end of a figurative seesaw, has been changed to an extreme tilt favoring the railroads. State action which creates arbitrary and discriminatory distribution of the property tax burden via arbitrarily disparate valuation methodologies is prohibited by the Fourteenth Amendment. **Cumberland Coal Co. v. Board, 284 U. S. 23-25, 30-1 (1931).** It is immaterial in determining constitutional violation whether discrimination benefits or burdens the railroads. Whoever is injured by the discrimination must seek the protection of the Fourteenth Amendments, if there is to be relief.

The postulate of the state action below is that all property in Illinois is of one class and that there must be uniformity in levels of assessment. See **L. & N. Rr. Co. v. Public Service Com. of Tenn., 249 F. Supp. 894 (M. D. Tenn. 1966)**, *appeal docketed,* No. 17180, 6th Cir., April 4, 1966 (oral argument on April 17, 1967). The judicial action below conflicts with **Hillsborough Township v. Cromwell, 326 U. S. 620 (1945),** which held on the pleadings that state administrative action creating arbitrarily disparate levels of assessment between properties of the same class for purposes of the property tax is violative of the equal protection clause.

If state assessed railroad property is deemed a different class from locally assessed property, then the judicial action below conflicts with the Fourteenth Amendment standard announced in **Walters v. City of St. Louis, 347 U. S. 231, 237 (1954)** (income tax):

> "Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which

> the classification is made, and that the different treatment be not so disparate, relative to the difference in classification, as to be wholly arbitrary."

We are not aware that this standard has been applied in the property tax field and we submit that plenary consideration of its application here will help to clarify the scope of equal protection limitations in that field.

We submit that only feigned differences serve to explain the wholly arbitrary judicial exclusion of inflation from the valuation of railroad property in judicial equalization determinations when non-railroad property valuations are tied exclusively to inflated prices. Nor, we submit, is there any relevance of such disparate treatment in distinguishing between the two classes of property, which perhaps differ significantly only in the sense that there is a division of assessment responsibility. Judicial equalization determinations which value railroad property by utilizing huge dataless "judgment factors," whether they increase or decrease the final figure, are arbitrary.[15]

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[15] Direct judicial review of railroad property assessments has to date failed to obtain judicial elimination of the influence of inflation captured by reproduction cost and original cost. The issue is does assessment exceed value and the "judgment factors" as elements of value weaken the railroads' case because they reduce the value determination, bringing it in line with the assessments. The opinions in many of these cases are revealing. *C&NW v. Dept. of Revenue,* 6 Ill. 2d 278 (1955) (Schaefer, J.) ("judgment factor" unexplained) *cert. denied* 351 U. S. 950 (1956), *rehearing denied,* 352 U. S. 859 (1956); *St. Louis-S. F. Rr. Co. v. Ark. Public Service Com.,* 304 S. W. 2d 297 (1957) (Ark.); *CB&Q v. Dept. of Rev.,* 17 Ill. 2d 376 (1959) (Schaefer, J.) ("judgment factor" unexplained); *Florida East Coast Rr. Co. v. Assessment Bd. et al.,* 178 S. 2d 355-357 (1965) (Fla.) ("judgment factor" unexplained); *CB&Q v. State Bd.,* 400 P. 2d 494 (1965) (Wyo.) (*semble*). The railroads have achieved more success in constitutional cases involving state uniformity clauses and the equal protection clause of the Fourteenth Amendment in which cases the issue is what is the relation of value to assessment, and the "judgment factors" as elements of value strengthen the railroads' case because they reduce the value determination bringing it in line with the [redacted] assess-

2. Judicial Activity, Both State and Federal, in Property Tax Equalization Litigation During the Past Decade Warrants Plenary Appraisal of the Present Day Soundness of Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362 (1940).

In 1940, prior to the onset of inflation, **Browning** held that state action which discriminated against railroad property in the distribution of the property tax burden was not a violation of the equal protection clause. Since 1940 the country has experienced marked inflation and vastly increased local government expenditures. As property tax bills have increased, the railroads have sought the assistance of the state and, to a lesser extent, federal judiciaries to enforce equalization.

State court decisions have refused to follow **Browning. Del., L. & W. Rr. v. Neeld, 130 A. 2d 6, 9, 11-2 (1957)**

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ment and thereby produce a higher level of assessment which increases discrimination vis a vis non-railroad property. *Kansas City So. Ry. Co. v. Board,* 331 P. 2d 899 (1958) (Kan.) (on pleadings); *Kansas City So. Rr. Co. v. Ark. Pub. Service Com.,* 323 S. W. 2d 193 (1959) (on pleadings); *CB&Q v. State Board,* 101 N. W. 2d 856, 862-4, 871 (1960) (Neb.) (arbitrary and unexplained reduction factor); *C&NW v. State Board,* 101 N. W. 2d 873-881 (1960) (Neb.) (arbitrary and unexplained reduction factor); *U. Pac. v. State Board,* 101 N. W. 2d 892, 899 (1960) (Neb.) (arbitrary and unexplained reduction factor); *People ex rel. Hillison v. CB&Q,* 22 Ill. 2d 88 (1961) (rationalized "judgment factor"); *People ex rel. Kohorst v. GM&O,* 22 Ill. 2d 104 (1961) (rationalized "judgment factor"); *C. M. St. P. & Pac. v. Gillis,* 118 N. W. 2d 313, 315-6 (1962) (S. D.) (reducing percentage of cost factor weighted); *C&NW v. Gillis,* 118 N. W. 2d 316 (1962) (per curiam) (S. D.); *So. Pac. v. Cochise County,* 377 P. 2d 770 (1963) (Ariz.) (on pleadings); *People ex rel. Wenzel v. C&NW,* 28 Ill. 2d 205 (1963) (rationalized "judgment factor"); *People ex rel. Enrietta v. GM&O,* 29 Ill. 2d 605 (1964) (rationalized "judgment factor"); *C&NW v. State Tax Com.,* 137 N. W. 2d 246 (1965) (Iowa) ("judgment factor" unexplained); *Florida East Coast Rr. Co. v. Green,* 178 So. 2d 355, 358 (1965) (Fla.) ("judgment factor"); *L. & N. Ry. Co. v. Public Service Com. of Tennessee,* 249 F. Supp. 894 (M. D. Tenn. 1966). (*appeal docketed,* No. 17180, 6th Cir., April 4, 1966) (injunction proceedings) ("judgment factor" acknowledged but unexplained).

(N. J.) (relief denied because of failure to exhaust administrative remedies); **Central Rr. et al. v. Neeld, 139 A. 2d 110 (1958) (N. J.)** (by implication) (relief denied because of failure to exhaust administrative remedies), *cert. denied* **357 U. S. 928 (1958); So. Pac. v. Cochise County, 377 P. 2d 770 (1963)** (Ariz.) (on pleadings). There is a growing number of state court decisions which perhaps by implication are also ignoring **Browning**: those cases cited in n. 15 *supra* at 29-30, which, on pleadings or otherwise, hold that the railroad taxpayer is entitled to relief from disparate levels of assessment. Many of these opinions do not discuss the basis for relief.

Moreover, two federal district court decisions have refused to follow **Browning. Del., L. & W. Rr. v. Kingsley, 189 F. Supp. 39, 46-50 (D. N. J. 1960)** (relief denied because of adequate state remedies, 28 U. S. C., § 1341); **L. & N. Rr. Co. v. Public Service Com. of Tennessee, 249 F. Supp. 894 (M. D. Tenn. 1966)**, *appeal docketed*, No. 17180, 6th Cir., April 4, 1966 (injunctive relief granted) (perhaps the first Federal District Court decision since 1937 to order relief for a railroad taxpayer under Fourteenth Amendment) (valuation of railroad property not reached).

We submit that the substance of **Browning** has been substantially weakened by **Hillsborough**. Questions calling for clarification of the present vitality or moribundity of **Browning** deserve plenary consideration. The questions presented here and the Record here bring into multi-dimensional focus the soundness of a decision of this Court which, as between railroad and non-railroad taxpayers, denies protection from discrimination under the Fourteenth Amendment.

3. Recent Involvement of the State and Federal Judiciaries in Property Tax Equalization Impels Plenary Consideration by This Court of Minimal Standards for Value Determinations Under the Fourteenth Amendment.

Congress has manifested the intention that state courts handle local tax questions even though they involve rights guaranteed by the Fourteenth Amendment. In 1937 the Johnson Act was enacted to eliminate the federal district courts (and thereby the Courts of Appeals) in matters involving local taxes unless an aggrieved party proves that the state legal machinery does not provide an adequate remedy. 48 Stat. 175 as amended, 50 Stat. 738, 28 U. S. C., § 1341. In property tax equalization cases, value determinations by the Judiciary are requisite to enforcement of state uniformity provisions and Fourteenth Amendment guarantees. Relatively uniform valuation methodolgy is required by the Fourteenth Amendment. **Cumberland Coal Co. v. Board, 284 U. S. 23 (1931).** This constitutional requirement has never been judicially applied in the context of invidiously arbitrary and discriminatory reflection of inflation in valuation methodology. If Congressional purpose is to be effectively and fairly implemented, it is imperative that state courts receive the benefit and guidance of some standards which only this Court can develop in the context of the Fourteenth Amendment.

Recent state court cases supporting our point are cited in n. 15 at 29-30 *supra*. The problem has now arisen in the federal courts. The Sixth Circuit Court of Appeals will soon render its decision in **L&N Rr. v. Pub. Service Com. of Tenn., et al., 249 F. Supp. 894 (M. D. Tenn. 1966),** *appeal docketed,* No. 17180, 6th Cir., April 4, 1966, (injunction proceeding). In that case, the District Court refused to follow **Nashville C&St.L. Rr. v. Browning, 310 U. S. 362 (1940),** and held that the Fourteenth Amendment

prohibits property tax discrimination against railroad property. But the Record and opinion in that case reveal uncritical acceptance of the administrative "judgment factor" as a valid element of value which reduces the final valuation figure of railroad property. *Id.* at 897-98. There is no evidence in the record of the Tennessee case which permits the Judiciary to appraise the nature of the 30% reduction of the formulaic average. Indeed, the Court did not consider the valuation methodology problem, because the Court did not measure the refund. It issued an injunction against collection of the taxes. Nothing more. With deference, we submit that without the benefit of minimal standards in value determinations, the Judiciary is led, due to inadequate records, to create discrimination for the railroads at the same time that discrimination against the railroads is remedied.

Should the Sixth Circuit Court of Appeals reverse the District Court on the Fourteenth Amendment point, it is probable that the railroad will bring the case to this Court. Should this Court decide to grant plenary consideration to the Tennessee case, the issue before this Court will not include the problem of discriminatory valuation methodology, which is inherent in the larger issue of Fourteenth Amendment limitation of property tax discrimination. Although the record in the Tennessee case is sufficient to raise the Fourteenth Amendment point decided by **Browning**, it lacks the evidence contained in the case now at bar, which permits formulation of some minimal standards for judicial valuation methodology in a concrete case. If the Sixth Circuit affirms the District Court, then whether or not Tennessee brings the case here, the precedent thereby established, coupled with past litigation, renders the questions presented here even worthier of plenary consideration.

Appellant is not seeking to have this Court determine the values of Appellees' properties. Two state courts be-

low have done that already, the trial court and the Supreme Court of Illinois. Rather, the equal protection and due process questions here involve mixed questions of fact and law—going to valuation methodology. Appellant does not ask this Court to apply the Fourteenth Amendment so as to direct Illinois, or any other State, how to value property for purposes of the property tax. Our submission is that this Court should grant plenary consideration in an equalization case to the proposition that however a State values property for purposes of the property tax, the valuation methodology must not be arbitrarily disparate and discriminatory as between railroad property and non-railroad property. Such consideration will serve to prevent the use by the Judiciary of constitutional provisions as instruments of discrimination through arbitrarily discriminatory valuation methodology.

4. Arbitrary and Discriminatory Constitutional Value Determinations by the Judiciary in the Property Tax Field Imply Curtailment of State Administrative Processes.

We can find no decision of this Court in which state judicial action in state tax uniformity litigation has been challenged as violative of the Fourteenth Amendment. The cases brought here have involved challenges to legislative and administrative action. Whatever reasons there are for deference by this Court to state action, those reasons are less valid in reviewing state judicial action enforcing constitutional mandates involving matters subject to expert administrative processes. In value determinations, judicial action is subject to serious error. The Judiciary is bound by the record. The flexibility and full time expertise of the administrative process is lacking. More significantly, discriminatory value determinations by the Judiciary in a constitutional case will have long range,

if not permanent, effect, whereas, errors by legislators or administrators are subject to easier rectification through the channels of political life. Cf. **Burrows v. Jackson, 346 U. S. 249, 257 (1953).**

In the case now before this Court, the Supreme Court of Illinois has determined that the value of railroad property for property tax purposes in Illinois as of December 31, 1962, was at a level which does not reflect post-World War II, inflation and net property acquisitions. The administrative process is bound thereby. In short, the state action here challenged commands the administrator that the valuation for railroad property cannot reflect or be increased by past, present or future inflation or reflect post-World War II net property acquisitions. No other type of property taxpayer in Illinois or in the United States has such shelter. As inflation continues and property tax burdens increase, the discrimination created by the decision in this case will increase as non-railroad taxpayers, whose property is valued at levels reflecting inflation, bear a disproportionately larger and larger portion of the tax burden vis à vis the railroads.[16] There can be no relief from this judicially created discrimination except by application of the Fourteenth Amendment. Cf. **Brown v.**

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[16] In 1963 the Director explicitly equalized railroad assessments pursuant to new legislation. The 1964 and 1965 railroad assessments distributed to Madison County were successively lower than the 1963 assessments, despite vastly improved railroad fortunes. It is reasonable to infer that the Director has gradually moved to eliminate the influence of inflation in respect of judicial mandate by gradually moving "judgment factor" dollars present in 1962 above the line of the annual average as deductions from the cost factor—at the rate of 3 for 1. If the inference is correct, it follows that as railroad capitalized income and securities values increase, the reduced cost factor in time will be used as a debasing factor to render valuations less than the average of capitalized income and security values, as was the case for some railroads, 1951-1962. See Appendix H at A-6 *infra*.

Board of Education, 347 U. S. 483 (1954); Baker v. Carr, 369 U. S. 186 (1962).

5. The Financial Impact of Arbitrarily Discriminatory Distribution of the Property Tax Burden Is Important for Locally Assessed Taxpayers, for State and Local Governments, and for the Railroads.

Illinois, of all the States, has the largest number of railroads, the highest state assessment of railroad property, and the most units of local government. Chicago is the country's greatest rail center. The precedent of the decision below is important for the future, as property taxes increase. We estimate that for the period 1957-1962, the railroads throughout Illinois protested in excess of $75,000,000, and based upon Supreme Court of Illinois determinations that railroad property assessments were at full value, the railroads have received, as the result of constitutional decision, all that money. At least one-half of the protested taxes should have been distributed to local governments, and we have conceded, for purposes of this case, that inflation and property acquisitions should be given **only** one-third weight in the value determinations, even though inflation is given 100% weight in valuing non-railroad property.

Nationally, the problem of fair distribution of the property tax burden as between railroad and non-railroad property is highlighted by the following facts. Capital expenditure by U. S. railroads 1946-1965 was $22,000,000,000. As of December 31, 1962, I. C. C. original cost new of the property of Class I Line Haul Carriers was $32,862,427,000. Total railroad property assessments in 1961 were only at the 7 billion level. See n. 8 at 13 *supra*. In all states, except ten, there is state assessment of railroad property subject to "Local General Property Taxation." Property tax collections in the United States increased from $4,198,000,000 in 1946 to $23,876,000,000 in 1965.

We are mindful of the impact of discriminatory property tax equalization on the railroads.[17] We submit that the railroads too are entitled to the protection of the Fourteenth Amendment in this field. We ask the Court to grant plenary consideration to the questions presented, to the end that the railroads of this country may have relief under the Fourteenth Amendment from significantly discriminatory levels of assessment. We submit that judicially enforced equalization between locally assessed property and state assessed railroad property, based on valuation of locally assessed property tied to inflated prices and unit valuation of state assessed railroad property which eliminates the influence of inflated prices and increased investment, is violative of the Fourteenth Amendment. See **384 U. S. 213 (1966)** (Appendix B, Appellant's Brief in Opposition to Appellees' Motion to Dismiss or Affirm) (Docket No. 1046). We also ask that the Court grant plenary consideration to the questions presented, to the end that the People may have relief from significantly discriminatory levels of assessment in favor of the railroads, at the same time that the Fourteenth Amendment is interpreted in such a manner as to afford similar relief for the railroads.

CONCLUSION

Plenary consideration of the questions presented will aid the People, aid the railroads, contribute to the financial strength of local government, enhance the integrity of the property tax system, and advance the proper ordering of the judicial system, state and federal, in implement-

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[17] The problem of alleged discrimination between railroads and other forms of transport is quite different from and unrelated to the issues in this litigation. Ascertaining the merits of this problem and its resolution belongs in other forums. See, *e.g.*, Statements of Board Members, BOARD ON CARRIER TAXATION, H. Doc. 160, 79th Cong., 1st Sess. (1944).

ing constitutional guarantees, with deference to Congressional intention as to the proper judicial forums.

For the foregoing reasons, jurisdiction should be noted and certiorari granted.

Respectfully submitted,

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September 29, 1967.

APPENDIX A.

The People ex rel. John Maeras, County Collector, Appellant,

v.

Chicago, Burlington and Quincy Railroad Co., et al., Appellees.

No. 40041.

Supreme Court of Illinois.

Jan. 19, 1967.

Rehearing Denied March 27, 1967.

House, Justice.

This is an appeal from 46 judgments entered on April 20, 1966, in favor of 12 railroads for refunds of property taxes paid under protest in Madison County for the tax years 1957 to 1962. The judgments were entered pursuant to the mandate of this court in People ex rel. Musso v. Chicago Burlington & Quincy Railroad Co. (Nos. 38859-38904 cons.), reported in 33 Ill. 2d 88, 210 N. E. 2d 196, wherein orders entered on August 20, 1964, were reversed and the causes remanded with directions

The orders of August 20, 1964, applied the straight formulaic average of capitalized earnings, market value of stock and debt, and reproduction cost less depreciation, and found that the railroads were undervalued. It directed refunds measured by the difference between the railroads' taxes and the amounts they would have paid if both locally assessed and railroad property had been assessed at full value. Upon review, we approved application of a judgment factor by the Department of Reve-

nue to the formulaic average, found that the record established the railroads' valuations to be at full value, and directed that the refunds be measured by the difference between the taxes assessed against the railroads and the amount which would have been extended had locally assessed property been valued at its full, fair cash value. The trial court was directed to make computation of refunds to the railroads in accordance with the above formula and to enter judgments for specific amounts of refund.

The objector railroads filed motions for final judgments after the consolidated causes were redocketed, to each of which was attached a table showing the amount of refund due each objector, computed in accordance with the mandate of this court. Upon withdrawal of opposition by the collector, the orders of April 20, 1966, were entered which implemented the mandate by ordering refunds in dollar amounts.

Thus, the present unique posture of the case is an appeal from the trial court's second set of orders to which no objection was made and the accuracy of which was not then, and is not now, questioned.

Appended to, and made a part of, the collector's brief is a motion to consolidate the record in the first appeal (Nos. 38859-38904 cons.), together with the abstracts, the People's two briefs, the railroads' three briefs and the petition for rehearing, with the record on this appeal. The motion has heretofore been denied by this court. However, we take judicial notice of such record, briefs and abstracts for the purpose of comparing the issues here attempted to be raised with those previously presented.

The collector contends that the judgments violate the uniformity clause of the Illinois constitution, S. H. A.

(Ill. Const., Art. IX, Sec. 2), and that they arbitrarily and discriminatively interpret and apply that clause repugnantly to the equal protection and due process clauses of the fourteenth amendment of the constitution of the United States.

The railroads filed a motion to dismiss the present appeal on the ground that all questions now presented either were, or could have been, presented in the first appeal, that the only possible question open for consideration would be whether the trial court followed our mandate and that any question as to whether the mandate was followed was eliminated by a written statement filed by the People on the relation of the collector on April 20, 1966, prior to the entry of the judgments. That statement specifically waived objection to the computation of the precise amounts of refund, and complained only that the computation utilized the determination that railroad property was assessed at full value. This motion was taken with the case.

The parties are in agreement that the questions presented here (all of a constitutional nature), were presented and argued in the first appeal, but the collector contends they were not there decided. We held that the record established the fact of full value assessment of the railroads' property, and consequently there was no discrimination against locally assessed property (which was concededly under assessed). It is inherent in those findings that there was no violation of constitutional uniformity and that the equal protection and due process clauses had not been violated. [Emphasis added.]

It has long been recognized that once a case has been decided by this court the only question which may be considered upon a subsequent appeal involving the same issue is whether the trial court followed our mandate. (Henning v. Eldridge, 146 Ill. 305, 33 N. E. 754; Muhlke

v. Muhlke, 285 Ill. 325, 120 N. E. 770; Schneiderman v. Interstate Transit Lines, Inc., 401 Ill. 172, 81 N. E. 2d 861.) The mandate was admittedly followed so there is nothing left to review. This is a deliberate attempt to relitigate the same issues presented on the prior appeal.

The motion to dismiss this appeal is allowed and the appeal is dismissed.

Appeal dismissed.

APPENDIX B.

"Final Order" Entered by Supreme Court of Illinois on January 19, 1967, No. 40041 (R. 110).

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is herein dismissed.*

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* Appellant had filed his Abstract and Brief on September 14, 1966 (R. 80, 82). The railroads filed a Motion to Dismiss the Appeal on September 16, 1966 (R. 89-93). The Supreme Court below denied the motion on September 22, 1966 (R. 96). Later the Court heard oral argument and considered the briefs of the parties. The railroads' brief asked that the appeal be dismissed or that the judgments of the trial court be affirmed (R. 100, p. 28). After entry of the order of dismissal, Appellant filed his Petition for Rehearing suggesting that the Court in view of its conclusions should have affirmed the judgments below instead of dismissing the appeals (R. 112). (Citations are to Ill. Sup. Ct. Rec. of the second appeal to the Supreme Court below.)

APPENDIX C.

Prototype of 46 Judgments Entered on April 20, 1966 by the Trial Court Pursuant to Mandates of Supreme Court of Illinois Issued September 30, 1965.*

(These judgments were appealed to the Supreme Court of Illinois and the appeal was dismissed. See Appendices A and B *supra.*)

Final Order on Valuation Objections, etc.

The pending tax objections of the Chicago, Burlington & Quincy Railroad Co. to taxes extended against its railroad property in Madison County for the year 1957 having come on again to be heard upon the order and judgment of the Illinois Supreme Court and its mandate and this Court being fully advised in the premises, finds and determines that:

1) It has jurisdiction of the subject matter hereof and of the parties hereto, and that due and proper notice of the hearing of said objections has been given to the parties hereto and the various taxing districts concerned in said objections as required by law.

2) The findings and paragraphs of the decision and judgment entered in this cause on August 20, 1964, which are inconsistent with the judgment of reversal and order of remandment of the Supreme Court of the State of Illinois entered in conformity with the opinion of said Court in its Docket Nos. 38859-38904 in the cause entitled **People ex rel. George Musso, Appellee v. Chicago, Burlington and Quincy Railroad**

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* The Tax Collector filed a statement specifically preserving the constitutional questions presented to the Supreme Court of Illinois and to this Court (R. 80, pp. 3-4).

Co., et al., Appellants, 33 Ill. 2d 88, are hereby vacated, set aside and held for naught.

3) The railroad property of the Objector was assessed and equalized by the Department of Revenue of the State of Illinois for the subject year of 1957 at its full fair cash value as the statute had in such case made and provided.

4) The Objector is entitled to be refunded the difference between the amount of any tax extended against its property in or for the subject year and the amount which the extended tax would have been had locally assessed property been assessed and equalized at full fair cash value.

5) The amounts of the respective taxes to be refunded to the Objector for the subject year shall be computed in the following manner:

a) For the subject year, the total equalized assessment of each taxing district shall be adjusted to the level of 100% of the full fair cash value of all taxable property located in the district and for such purposes the level of the unadjusted equalized assessed value of locally assessed property in the district shall be deemed and taken to be 48.14% of the full fair cash value thereof, as heretofore found by this Court, or a percentage of 50% of the full fair cash value of such property, as may be mutually agreed by the Appellant and the Objector.

b) The amount of the taxes extended each year for the separate funds of each taxing district shall be divided by the adjusted total assessed valuation of taxable property in the district to produce the adjusted rate for each fund.

c) The total of the adjusted rates in each district shall be applied to the assessed valuation of objec-

tor's operating property in said district for the respective year and the adjusted amounts produced shall be the objector's lawful amount of tax for that district.

d) The lawful amount of objector's tax for each district as so determined shall be subtracted from the amount of tax which was extended against objector's operating property in said district for that year and the amount of the difference shall be refunded to objector, not to exceed the amount of that tax which was paid under protest and not heretofore refunded.

6) If any so-called rate or datum objection to any such tax has heretofore been paid or allowed by order of this Court, the amount of the refund of any such tax refunded upon the valuation objection of said objector shall be reduced by crediting to and against such valuation refund the same percentage or proportion of such previous rate or datum refund, and in any case, the total amount refunded the objector upon its valuation objection to any tax and upon any rate datum refund to the same tax, shall not exceed the amount of such tax paid under protest by the objector.

7) Any and all pending rate or datum objections shall be and they are reduced at the percentage or proportion that the valuation objection refund of that tax is to the total amount thereof extended against the objector's property.

8) The objector has filed with the Clerk of this Court and there is made a matter of record in this cause a table showing and giving effect to the foregoing provisions of this order in respect to the computation of the refunds to which the objector is entitled upon its said valuation objections to the taxes levied upon its property in Madison County for the

subject year. Said table is marked Exhibit A of said objector and a copy thereof is to be attached to and made a part of this order and the said exhibit is hereby approved subject only to verification in respect to the computations made thereby, as is hereinafter ordered.

9) The taxing districts are entitled to distribution of any excess of the amount protested upon any tax by the objector over the aggregate amount to be refunded upon the valuation objection thereto and the amount of any such reserved and adjusted rate or datum objection to such tax, and in case there is no pending rate or datum objection to such tax, a taxing district is entitled to the excess of the amount protested upon that tax over the amount to be refunded on said valuation objection thereto.

It is, therefore, considered, ordered, adjudged and decreed as follows:

1) That the objector's valuation objection is sustained to the taxes levied upon the railroad property of the objector for the subject year in the amounts hereinafter ordered and the Collector's application for judgment is hereby denied.

2) The amount to be refunded to the objector and the amount to be retained by the Collector (and the amount to be distributed by him to the various taxing bodies of this district), as shown by said Exhibit A shall be verified by the Collector or his designated representative and such verification shall not be unreasonably delayed.

3) There shall be refunded to the objector the amounts shown by Column "Equal Refund" of Exhibit A, after verification by the Collector as aforesaid, with any corrections which may be determined

upon in the computation of any amount to be refunded upon such taxes and the aggregate amount of such refunds shall be forthwith paid by the Collector to the objector.

4) The collector shall make distribution to the taxing districts of any funds paid under protest upon the taxes for the subject year over the amounts refunded to the objector upon its said valuation objection and to the extent same are available above any sums reserved for any adjusted rate or datum objections to said taxes.

5) Jurisdiction is hereby reserved over pending rate or datum objections to said taxes and for the purpose of approving any computation of refunds upon said valuation objection or the gross amount thereof, in accordance with the foregoing provisions of this order.

Enter April 20, 1966.

James O. Monroe, Jr. /s/
Circuit Judge

(Computation data at end of Judgment omitted.)

APPENDIX D.

In the Supreme Court of Illinois.

(Nos. 38859-38904.—Reversed and remanded.)

The People ex rel. George Musso, County Collector, Appellee, v. Chicago, Burlington & Quincy Railroad Co. et al., Appellants.

Opinion filed June 24, 1965.—Rehearing denied Sept. 27, 1965.

Appeal from the Circuit Court of Madison County; the Hon. James O. Monroe, Judge, presiding.

Mr. Justice House delivered the opinion of the court:

Twelve railroads filed objections to taxes levied against their operating properties in Madison County for the years 1957 to 1962 inclusive, and seek a return of that portion of the taxes paid under protest. They contend that their Illinois property was assessed at full value while the equalized value of locally assessed property did not exceed 55% of full fair cash value in any of the tax years involved, and that the discrimination is so gross that it is constructively fraudulent against them.

The objections were consolidated for hearing by the circuit court of Madison County. It found that locally assessed property, after equalization, had been assessed at county-wide levels from 48.14% to 51.40% of fair cash (full) value, that the railroads properties were likewise undervalued at 58% to 85% of full value and that the dis-

parities were so great as to constitute gross discrimination against objectors. The refunds ordered were not in dollar amounts but in percentages and the parties were to make the computations. The measure of refund was the difference between the railroads' taxes and the amounts they would have paid if all property in the county had been assessed at full value. The amount of each such refund was limited by (a) giving effect to any other refunds (from excess rates and the like) and (b) the amount of the protest. Jurisdiction was retained to approve or correct the computations and to "implement" the process of refund. The railroads perfected these 46 appeals directly to this court. The Collector has not appealed from the orders finding the percentage debasement of locally assessed property, nor has he cross-appealed from the findings of gross discrimation against the railroads or the orders for refund.

This is the second case in the series of railroad objection cases which have not contested the debasement of locally assessed property as disclosed by the ratio studies of the Department of Revenue. (See **People ex rel. Korzen v. Chicago, Burlington & Quincy Railroad Co.**, Docket No. 38942). The only issue, therefore, is whether the railroads' properties were assessed at full, fair, cash value for the years in question. This should involve only a question of fact, to be viewed in the light of the law as developed and crystallized through a succession of these cases. While the Collector recognizes and appears to accept the principles developed in **People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.**, 22 Ill. 2d 88; **People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.**, 22 Ill. 2d 104; **People ex rel. Dallas v. Chicago, Burlington & Quincy Railroad Co.**, 26 Ill. 2d 292; **People ex rel. Wenzel v. Chicago and North Western Railway Co.**, 28 Ill. 2d 205; **People ex rel. Enrietta v. Gulf, Mobile and Ohio Railroad Co.**, 29 Ill. 2d 605, and earlier decisions, there is woven

into the fabric of his argument in applying the law to the evidence the constantly recurring theme that the Directors of Revenue have, since 1949, sought to do equity through debasement of railroad values by the application of their judgment and thereby "hold the line" against widening the gap between State assessed railroad property and locally assessed property. Thus, while giving lip service to our approval of valuation methods (in some cases the same railroads' objections were before us for the same years here involved), the net result is an indirect attack upon those methods.

This whole argument is predicated upon the theory that in the prior cases the background evidence was insufficient to reveal the valuation methods at the State level over an extended period of time. In counsel's language: "The magnitude of the new explanatory evidence and the insight it permitted led the trial court to a consideration of several legal points which this Court was not called upon to confront in the four prior cases [**Hillison, Kohorst, Wenzel** and **Enrietta**] because of the limited records, including the presumption of constitutional compliance by the Directors."

There has been offered by the Collector much evidence by way of exhibits, some or all of which were not presented in one or more of the previous cases. For example, the ten annual reports of the Illinois Tax Commission covering the period 1933-1942 are in this record while the first five of such reports were not previously included; data sheets for all Illinois railroads from 1951 to 1963 are in evidence and in previous cases only those of the subject carrier and subject years were introduced, although expert testimony was predicated upon examination of all such sheets. In addition, annual reports of the Department of Revenue since 1945, annual reports to stockholders of various railroads, railroad information schedules returned to

the Department, United States census data, Interstate Commerce Commission reports and procedures, graphs based upon exhibits and other documents have been offered. Many of the same exhibits have been introduced by both parties. Objections have been made by the railroads that some of the literature, price indices and other materials were never admitted in evidence. A stipulation provides for the admission of evidence without a foundation being laid and is sufficiently broad to encompass almost any public document, although it contains the limitation that all were subject to objection as to relevancy, materiality or competency. There is no point in ruling on each exhibit. It is sufficient to say that out of this welter of exhibits, making a record of gargantuan proportions, we have considered only those in the record or those of which we may properly take judicial notice.

The Department of Revenue took over railroad assessment and valuation duties of the Illinois Tax Commission subsequent to the adoption of the Revenue Act of 1939. During the taxable years in question and earlier, section 80 of the act, (Ill. Rev. Stat. 1961, chap. 120, par. 561,) provided that the Department determine and assess at fair cash value the operating properties of the railroads in this State. In doing so it was to take into consideration the market value of stock, bonds and other applicable indebtedness for the preceding 5 years; the net earnings for the preceding 5 years "and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company." The method used by the Department under this statutory directive is explained and illustrated in **Chicago and North Western Railway Co. v. Department of Revenue**, 6 Ill. 2d 278, and **Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue**, 17 Ill. 2d 376.

Three evidences of value: capitalized earnings, market value of stock and debt, and reproduction cost less depreciation have been in use, in varying degrees, at least since 1933. The Tax Commission's report for that year, commenting upon methods used to determine system values named the following: (1) original cost plus additions less depreciation or reproduction cost less depreciation; (2) capitalization of net earnings; and (3) stock and bonds value. It went on to say, "These three methods of valuation condition and limit each other so that a fourth method which is a composite of the above or a weighting of the various factors previously enumerated, ought to be identified. The composite method rests upon the theory that no one valuation formula is satisfactory and that true values can only be determined by a consideration of all of the elements above enumerated. • • • Primary emphasis, it is believed, should be given to earnings and stock and bond quotations in the valuation process. It is felt that these are a better reflection of the current market value of a railway than original cost." It will be noted that the formulaic result obtained by taking the average of the three valuations was not recommended. Furthermore, subsequent annual reports show conclusively that the three factors were not given equal weight. (For example, railroad valuations varied from 58% above the straight average in 1933 to 1% below such average in 1939.)

The reports of the Tax Commission for 1939-1940 again referred to the three factors, pointing out the strengths and weaknesses of each. While recognizing the desirability of a formula, the use of judgment was said to be necessary in the following language: "The development of rules of procedure for analysis of pertinent data, therefore, evidences an improving standard of administration. Such a tendency does not necessarily imply the abandonment of all non-measurable elements of judgment and reduction of the process of arriving at an assessment to a

mechanical formula. All through the process of determining an assessment the necessity for utilizing judgment arises, and in the final summary the 'tangled impressions' act directly upon the result." (The term "tangled impressions" refers to Mr. Justice Holmes description of the process of arriving at valuations in **Chicago, Burlington & Quincy Railroad Co. v. Babcock,** 204 U. S. 598, 51 L. ed. 636, where he said, "'They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions,—impressions which may lie beneath consciousness without losing their worth.")

The Commission's last reports for 1941-1942 referred to the current upswing in railroad earnings and though stating that other factors (stock and debt and reproduction cost) were considered, nothing is said to indicate the use of a fixed formula.

The 1943-1945 combined reports by the Department and those for 1945-1949 shed little light on assessment methods. The latter indicate that the 1946 and subsequent railroad assessments were made in accordance with the full value assessment legislation adopted in 1945, and state, perhaps significantly, "Departmental assessments were made and certified to the local taxing districts at full value." Counsel for the Collector concedes that there is little available documentary information of the use of a formula during the 1940's and none after the early 1940's, except for a memorandum by Lynn A. Stiles dated January 28, 1949 (which was not then admitted), but which Stiles referred to when he testified. He stated that the formulaic approach (average of the three factors) was closely followed in the years 1943-1949. However, his recollection was that the assessments varied 5% or 10%, plus or minus. from the formula and conceded "* * * but I would be more comfortable in recollection with a ten percent spread in (sic) either side."

The historical background does not support the Collector's thesis that a straight formulaic arithmetical approach has been adopted. It shows rather that judgment, whether designated by that term or not, has always been used in the valuation process. We now proceed to examine the evidence which according to the Collector's theory, establishes a "hold the line" policy since 1949.

Harry L. Hulman became Deputy Director of the Department of Revenue in 1961 and Director in September 1963, and participated in railroad assessments in 1961 and 1962. In both years a judgment factor was applied to the formulaic result. A total railroad valuation was fixed at 1 billion 32 million dollars for 1961 and at 999-plus million dollars for 1962. The judgment factor was said to vary among the railroads to achieve those total figures, not in an effort to keep the assessments level but to determine proper assessment. For the first and only time, so far as we are aware, the phrase "hold the line" was used when Director Hulman said, "* * * and more or less arbitrarily we took the figures and tried to hold the line as close as we could to the 1960 assessment until such time as we could delve into railroad assessment further and make a study of it." He testified that he examined all of the data sheets and that no one in the Department abused their responsibility in making the 1961 and 1962 assessments. He also testified to the method of assessment he used in 1963 to implement the 1963 amendment to section 80. The amended section is the same as heretofore quoted except that the Department is now to apply an equalization factor to full value, which factor is the State-wide average ratio of assessed value of locally assessed property to the full value of locally assessed property. He stated that he used the straight formulaic average of the three factors (without application of a judgment factor) and then applied a 50% equalization factor. This method is, of course, not in issue here, since it was used in a year subsequent to the

years for which objections were filed and being heard in these proceedings.

Edward F. Koncel, who had railroad tax background, succeeded Raymond L. Danis as Supervisor of Railroad Assessments in November 1960 and worked up the rail valuation figures for 1961 and 1962. He was familiar with methods Danis used in 1959 and 1960 and he used the same methods of arriving at valuations in the two subsequent years. He testified that the assessments were at full value and in reply to a question as to whether the findings of full fair cash value by the Department debased or equalized its railroad assessments he said "no". He stated that the small reductions of railroad assessments in 1961 and 1962 were less than the decline of all three indicators of value, or any one of them.

Leo Cohen, Professor of Economics at Southern Illinois University, testified as an expert for the Collector. He recognized the possibility of corrections within each component factor, but when the three were added together and divided by three, thereby producing a straight average, he stated that judgment should not be applied. He does not say that full value was never attained but says that in his opinion the application of the judgment factor was wrong. In summary, he has his own theory of how the valuations should be obtained, which is different from that used in Illinois and approved by this court.

We have heretofore commented upon the evidence of former Railroad Assessor Stiles. Professor Rolf Weil testified in behalf of the Collector but only with respect to valuation of locally assessed property, which is not here in issue.

As pointed out by Collector's counsel the primary sources of information from 1949 to 1960 are the data sheets and the testimony of Raymond S. Danis. Danis worked for the Department of Revenue and its predecessor

the Tax Commission from 1933 until his retirement in 1960. He was Railroad Assessor for 2 years and then became Supervisor of Railroad Assessments, later known as Railroad Assessment Supervisor. It was his duty to arrive at a valuation which was then recommended to the Director for final assessment. The director usually used his valuation as the assessment figure with minor adjustments. Upon final assessment it was his duty to certify the assessments to the counties. He testified that the method of arriving at railroad property valuations was practically unchanged from 1933 to 1960 except for a minor change which will hereafter be referred to. The statutory factors of capitalized earnings and market value of stock and debt were used together with cost of reproduction less depreciation. The average of the three factors was then taken to guide in the appraisal. Other information considered relevant was taken into consideration and applied to such average in the exercise of what he said was commonly called "the judgment factor", and that such judgment factor has always been applied. He testified unequivocally that to the best of his judgment the valuations fixed by him were the full fair cash value of each railroad in each year.

Danis made a minor change in procedure in 1957. The judgment factor was applied to the straight average until that time, but he then inaugurated a new type of explicit adjustment to the cost factor by a reduction for obsolescence (in addition to one for uneconomic property) before applying a final judgment factor to the average thus obtained. He is criticized by Collector's counsel for making reductions from the formulaic averages after the explicit reductions were made. It is also inferred that his testimony in the several cases over the years has been inconsistent. No foundation was laid for impeachment of Danis and he was not in fact impeached. A careful reading of this man's testimony indicates no evasion, and surpris-

ingly few discrepancies in his testimony in this case, or between his testimony in the several cases, considering the magnitude of the subject matter covered.

Charles M. Chapman, an expert in this field, was familiar with railroad valuation methods in Illinois and said that the three factors were used in some other states with emphasis upon capitalized income. He stated that every tax assessor is expected to exercise judgment. He was particularly critical of any extensive use of reproduction cost because price indices indicate that some items of property rose 300 percent or more of original cost since World War II. He said that cost, in any form, necessarily represents value only at the time of construction. Original cost probably must have been justified or the line would not have been built, but when the returns do not justify the investment there is a constantly increasing variation between the value and historical cost, and the gap becomes even wider by applying current prices to reproduction new.

Broley E. Travis, a consulting valuation engineer, expressed the opinion that it was sound appraisal practice to adjust an arithmetical result, and that based on the chart the 12 Madison County railroads were assessed at least at full, fair cash value between 1951 and 1962.

H. Clyde Reeves, with wide experience in the railroad valuation field with the State of Kentucky, was also critical of giving any substantial weight to reproduction cost and approved the use of judgment. He testified that if a formula incorporated Interstate Commerce Commission valuations as substantial indices of value, that a substantial judgment factor must be used "to get them out". As to the Gulf, Mobile and Ohio Railroad 1959 assessment it was his opinion that it was on the high side of tolerance.

Over the years the composite assessment figures for all major class I railroads in Illinois show a variance of over

100 million dollars and the assessed value of the 12 lines here involved varies in about the same proportion. The charts based on the assessment figures for these roads each show considerable variance and they vary widely from road to road. In some instances the curve of one is upward while the curve of another is downward. In comparing assessments of Class I railroads in a particular year with those of the year immediately preceding many changes are found. For example, from 1951 to 1952, 14 were increased, 4 decreased and 4 remained unchanged, with a high percent of increase for one railroad of the group of 12% and a high percent of decrease of 1%; from 1956 to 1957, 28 were increased, 4 decreased and 5 remained unchanged, with a high increase of 6% and a high decrease also of 6%. The figures for the other years between 1950 to 1957 were in about the same proportions. Thereafter to 1960, the number of decreases was pronounced. The charts, and the figures upon which they are based, refute any argument that a static level of assessment was maintained.

All parties agree that of the three indicators of value reproduction cost less depreciation has been the most unstable, and the exhibits fully bear that out. After World War II such cost skyrocketed upward until it reached the astronomical figure of $2,162,197,000 in 1963, even after the Interstate Commerce Commission figures had been revised by the Department of Revenue by further reducing the condition percentage used by the Commission and applying the explicit adjustments for public improvements and obsolescence. This compares with a capitalized income value of $728,228,000 and market value of $877,776,000, both of which indicators had remained fairly level. If the cost factor is averaged equally with the other two (⅓ each), the relative weight of each factor to the straight average produced would be: cost 57.38%, market 23.29%, and income 19.33%. The charts of the 12 railroads in-

volved depict the influence of the reproduction cost factor. From 1951 to 1958 the market factor line was lowest with the income factor slightly higher. The lines then crossed and the market line was slightly higher. The same is true of the average of income and market which was fairly level around the $500 million mark. The level of assessment was higher at all times except for the period from 1954 to 1957 when the income was temporarily higher. During the same years the reproduction cost line rose from about the $1 billion mark and in a relatively steady manner until it reached approximately $1½ billion. This cost factor, of course, raised the straight average of the three from just under $700 million to about $900 million before dropping back in 1958. A further comparison may be drawn from the data sheets of one of the railroads (the Burlington) for the same period. Income declined from a high of $155,355,000 in 1952 to a low of $100,595,000 in 1962, market value increased from $112,475,000 in 1951 to a high of $139,027,000 in 1958 and then steadily declined to $123,973,000 in 1962. Reproduction cost increased from a low of $219,050,000 in 1951 to a high of $336,645,000 in 1958, then receded gradually to $315,165,000.

The application of judgment or use of a judgment factor was recognized in the **North Western** case (6 Ill. 2d 278), the **Burlington** case (17 Ill. 2d 376), and **Kohorst**, and was given specific approval in **Hillison**. As was said in **Enrietta**: "A careful review of the entire record leads to the inevitable conclusion that judgment must be used by appraisers in the intricate problem of arriving at an assessed valuation of a railroad, whether it be by using various factors, then applying the judgment factor as is done in Illinois, or the choosing of a percentage for capitalizing net operating income and the fixing of the percentage weight to be given the reproduction cost factor. The Department has chosen a method to carry out the statutory mandate and has used it for many years. The

method has received the tacit approval of this court in a number of cases (Cases Cited)", 29 Ill. 2d 605, 608. We are not disposed to change those views.

Nor can we say that those in the Department who were responsible for fixing railroad assessments abused their authority in the application of judgment. They certified that the resulting assessments were at full value and the Railroad Assessment Supervisor testified that to the best of his judgment they were full value assessments. This evidence is not refuted. True, the record amply discloses that a formulaic or straight average of the three factors was not followed, but that does not solve the problem. The issue is whether the final assessments were at full value based on the two explicit statutory factors and such other information as the Department considered as bearing on fair cash value.

The parties have presented an argument which is difficult to follow. The railroads charge that the courts have no power to review or determine the value of property fixed by the administrative officers in the absence of fraud, actual or constructive, and that if they invade that field there is a violation of Section 1, Article IX of the constitution. Apparently this is based upon the fact that the Collector did not allege fraud on the part of the Department through the alleged undervaluation of railroad property. But the railroads did charge constructive fraud, and it follows that it was necessary for the court to consider whether there was a debasement of locally assessed property and similarly whether there was debasement of railroad property in order to determine whether there was discrimination and, if so, whether the degree of discrimination was so gross as to amount to constructive fraud. We do not have to pass upon the question of whether the trial court exceeded its authority in finding the exact degree of discrimination and ordering refunds based on such findings in view of the holding in this opinion.

It would also be futile to discuss whether the former cases are *res judicata* or whether the rules of collateral estoppel apply. Only a fraction of the railroads here involved were parties to the prior cases and all are parties to this consolidated proceeding which is being decided as a unit since the proof applies to all.

Much of the record in **People ex rel. Korzen v. Chicago, Burlington & Quincy Railroad Co.**, No. 38942, which involved evidence of sales of other railroads between 1947 and 1961 in an attempt to show the Department's railroad assessments to be less than full value has been introduced in this proceeding. The holding of incomparability in that case is controlling here.

In summary, the formulaic approach has never been adopted in this State and in fact has not been used. The judgment factor has been applied for a number of years and its use has been recognized and approved by this court. The record does not support the Collector's oft-repeated theory that in the use of judgment the Railroad Assessment Supervisors and the Directors abused their authority by debasing valuations in an effort to "hold the line". We hold that the proof establishes assessments of the railroads at substantial full value and that objectors are entitled to the refunds prayed for rather than refunds fixed by the trial court, which in each case was to be computed upon the straight average formulaic result without application of the judgment factor.

The judgments of the circuit court of Madison County are reversed, and the cause is remanded with directions to order refunds in conformity with the method outlined in the **Hillison** and **Kohorst** cases and subject only to the same limitations there fixed.

Judgments reversed and causes remanded, with directions.

APPENDIX E.

Prototype of the Forty-Six Judgments Entered by the Supreme Court of Illinois in 1965.[a]

And now, on this day [June 24, 1965], this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error.

Therefore, it is considered by the Court that the error and others in the record and proceedings aforesaid, the judgment of the Circuit Court of Madison County in this behalf rendered, Be Reversed, Annulled, Set Aside and Wholly for Nothing Esteemed, and this cause be remanded to the Circuit Court of Madison County with directions to order a refund in conformity with the method outlined in the **Hillison** and **Kohorst** cases and subject only to the same limitations there fixed.

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[a] II Ill. Sup. Ct. Rec. 172-217.

APPENDIX F.

In the Circuit Court of Madison County, Illinois.

STATEMENT BY TRIAL JUDGE OF REASONS FOR DECISION* [August 20, 1964.]

This case involves the effort of counsel and Court to dispose of tax litigation pending as long as seven years. The delay has been due to the death of one of the principal attorneys after part of the litigation had begun, to preoccupation of the County Court with other matters, to an arms length and standoffish attitude of counsel for both sides, to the lack of regular judicial statistics and administrative devices focusing on case backlogs, and to the inattention and lack of interest inherent in the non-supervised court system prior to January 1, 1964.

The review of case statistics accompanying the transition to the new court system under the Judicial Article effective in 1964 focused attention on the tax case backlog. Flexible administration possible under the new unified court permitted the assignment of one judge-more or less full time to the problem. And counsel for both sides have responded with enhanced attention and interest.

Tax objections of thirteen railroads were involved for tax years 1957, 1958, 1959, 1960, 1961 and 1962. The aggregate was 52 separate "cases". The multiplicity and complexity were in large part eliminated by several devices. 1) Additional parties in some of the cases were added by voluntary entry of appearance or by appearance requested by the Court and made binding after certain preliminary proceedings. 2) All of the cases thus brought together were treated as one consolidated matter through

* [Notes are at end of Statement.]

merger and stipulation that one determination could be made on the primary issue inherent in all the cases, with this determination, modified appropriately, to take effect in regard to each individual controversy. 3) A comprehensive stipulation was made by counsel for the admission of many official documents without technical foundation. 4) The evidence of several witnesses was taken outside the county on three trips to Chicago and one to Springfield, with the trial judge accompanying counsel so that objections could be decided on the spot and return trips eliminated. 5) Hearings were expedited. 6) Full briefs and memoranda were received in a most informal way including oral and letter responses, giving counsel maximum time for presentation of views without the time-consuming effort of answers and replies.

The offerings were voluminous. There were some 150 exhibits for the Collector and 106 for the Objectors. In all, 26 witnesses testified, including those by depositions. Depositions from other cases were brought in. Documents ranging from economics and accounting to railroad operations were presented. Some of this struck the Court as unnecessary, since it involved matters of which the Court could have taken judicial notice or which it could have found in any good library.[1]

Generally all evidence which had any substantial pertinence and probative value was admitted, under the rule that a trial judge deciding a non-jury case will disregard improper evidence.[2]

From all the evidence, the Court has sought: a) some guarantee of authenticity, such as the official nature of a document, the personal observations of an occurrence witness, or the expertise of an expert giving his opinion; b) some insulation against corruption, so as to preclude speculation, hearsay, self-serving statements and other unreliable evidence; c) some substantial pertinence to the

inquiry; and d) some probative value. These requirements led to the Court's urging counsel to select from the vast mass of evidence what counsel considered pertinent, with some statement of reliance on this.

Under the prevailing tax law the Court has indulged in the presumption that taxing authority personnel have properly performed their duties. The Court has viewed this presumption as rebuttable at both the state and local tax levels. It has also indulged in exceptions to the best evidence rule, permitting witnesses to summarize the contents of massive documents and to tabulate or epitomize these conclusions; exceptions to the hearsay rule, permitting official government document entries; and exceptions to the rule against opinions and conclusions in the case of experts.

The Objectors made broad and continuing objection to both main lines of evidence presented by the Collector, that tending to rebut the Objectors' evidence of sales-assessment ratio studies showing under-assessment of local property, and also that tending to rebut the Objectors' evidence of 100 per cent assessment of railroad property by the state revenue department. Regarding local assessment, the Objectors' evidence was the more weighty, the Collector's was not dispositive, and its admission was not critical. Regarding state assessment, the Collector's evidence was more weighty and dispositive so its admission is in point.

Objection to the Collector's evidence of state assessment was on three broad grounds: 1) that the Court has no jurisdiction to inquire into the matter; 2) that the matter was closed by collateral estoppel or res judicata; and 3) that the Collector was impeaching his own party or witness. The evidence was admitted subject to motion to strike and the objection and motion were taken with the case. For reasons detailed below, the objection was

overruled, the motion to strike denied, and the evidence admitted.

First, the term "jurisdiction" as involved here is **not** used to connote **authority** to sit, **nor right** to conduct an inquiry, **nor power** to make a determination. These things are not disputed: indeed, the Objectors ask that the Court assert its power in their behalf. Rather the term "jurisdiction" here means **warrant** or **justification** or **cause** to act if the party seeking relief makes a proper case, much as the term is used in the sense that "equity has (or has not) jurisdiction" to grant relief in a proper case; in other words, simply whether there is a **cause of action.**

When with this view is coupled the idea of administrative validity, the view is reinforced. Administrative actions are presumptively valid (though the presumption is rebuttable). And, it is said, unless an administrative finding of railroad valuation by the state revenue department is actually, expressly or constructively fraudulent, there is no "jurisdiction" to review it. All this really means is that, lacking fraud, 1) the administrative finding is presumptively (though rebuttably) valid, and 2) there is no **warrant, justification or cause of action** to set it aside. This is what the courts have actually held, however, somewhat loosely they have used the term "jurisdiction".

Given jurisdiction in the sense of the authority, right and power to act, the court may of course inquire into the validity of the administrative action (presumed or rebutted) or to any alleged constructive fraud, regarding **both** local and state administrative findings.

Second, the Objectors alleged and made an issue as part of their constructive fraud case the contention that (state) railroad property assessments were at 100 per cent of full fair cash value while other (local) property assessments were at not more than 55 per cent. On both points the

Objectors offered much evidence. Now, to claim that the railroad assessments are items closed by res judicata or collateral estoppel is to preempt half the inquiry and beg one of the two major questions made issues in the case.

The claim is not well based, even in inference. It lies with cases in which the railroads claimed their state assessments were excessive—more than 100 per cent.[3] But the Supreme Court in holding otherwise did not say they were not less than 100 per cent. The first such case reversed a judgment that the assessment was excessive, holding in effect that the assessment was **not more than 100 per cent.** The second discussed the factors and affirmed a trial court remandment to the department for reconsideration on the factors as clarified by the high court opinion, which said in effect that the assessment **might or might not be more than 100 per cent.** Obviously, what is not more than 100 per cent, or what might or might not be more, **could very well be less than 100 per cent.**

Wholly aside from this, it should be observed that except for rare cases, the State is never estopped.[4]

Third, regarding state assessments, the State, the People or the Collector as their agent had only one position and one approach in the evidence here—that the Objectors had not shown 100 per cent assessment of railroads. The Collector's evidence was consistent with this position. His witnesses were consistent with it. That the Objectors relied on testimony of state-employed witnesses or state-prepared documents is not material. Such evidence was admissible but not conclusive. The Collector could refute such evidence without impeaching himself or his principal or his witnesses—just as a corporation could show that its officer acted ultra vires, or a principal could show that an agent acted outside his authority.

Presumptions.

We begin with two presumptions, at two levels: a constitutional[5] presumption that all taxes are to be uniform, whether assessed at state level or at local level; and a statutory[6] presumption that all property is assessed or valued for tax purposes at its full fair cash value, again whether assessed statewide or locally.

The Collector suggests that the two presumptions may work somewhat against each other: i. e., that whereas 1) a statutory requirement of full assessment at all levels, and a frank recognition by the legislature[7] and by the revenue department and local assessors that this requirement is largely and widely ignored, calls for equalization among counties and relief here from inequities between statewide railroad assessments and lower local assessments; nevertheless, 2) a constitutional requirement of uniformity indulged by the state revenue department through adjustments of its railroad assessments to "hold the line" considering such factors as inflation and rises in reproduction costs, and commensurate with the debasing of valuations it has found at local levels, constitutes "implicit equalization" already in the figures, making further relief unnecessary and unwarranted here.[8] The Collector asserts this "implicit equalization" is achieved by the department through a gross, unwarranted, ad hoc, and even unarticulated reliance on market value (of stock and debt) and income (capitalized earnings) and an under-reliance on reproduction cost as factors in determining true value. The Collector backs his claim with an elaborate and documented historical approach, which is well taken but not alone relied on here.

The Objectors say that locally the presumption of full fair cash value assessment (100 per cent) can in any case be and has in this case been rebutted. But they say that at state level the presumption has in this case not been and could in any case not be rebutted.

Regarding local assessment, the Court must agree. Regarding state assessment the Court must differ. If the presumption is, as the Objectors say, rebuttable at local level, why not statewide? (Are state officials so much more immune from pressure, so much more competent, so much more pure than local officials? Recent indications, regarding high state officials of both major political parties, would hardly warrant such a claim.) If a rule of law applies for one litigant, why not for another in the same case? (The Collector here of course claims at state level the same rebuttability as the Objectors claim at local level.)

The law on presumptions is in accord with this reasoning. The presumption involved here—that assessing officials do their duty—is not a conclusive rule of law, but (by the Objectors' own reasoning, at local level) a presumption of fact, rebuttable. As a matter of law, it could be rebutted.[9] As a matter of fact, it has been rebutted.[10]

Nature of the Evidence.

That it is the state revenue department which finds local deviations from full assessment supports claims of debasement at local levels and makes the findings a kind of admission against the State's (hence the People's or Collector's) interest. The statutory provision for this determination of the extent of local debasement is the result of the legislature's recognition of what virtually every sophisticated observer may know already—that property assessments in Illinois are seldom if ever at full value. At local level, in this case, the fact of such debasement is not even disputed—only the extent. Such a recognition, such a lack of dispute about it at local level, should make suggestions of similar debasement at state level more acceptable, not to say more realistic and compelling.

The "admission" against State (People and Collector) interest, the admission of local assessment debasement,

carries considerably less weight as a standard admission when it is realized that the department in finding local deviations from full value is not volunteering but statute-bound[11] to seek them, and is criticizing not its own personnel but local personnel when it says they did not follow the full-value assessment requirements of the law. The department findings are not striking or even unusual, and they gain their standing to refute the presumption **not** as declarations harmful to the declarant and hence not to be made unless true,[12] but as part of a statutory process called for by the well recognized realities of Illinois tax assessment.

There are similar realities at the state level.[13] The department is apparently undermanned. The data is supplied by the taxpayers, not independently checked. Inspection or appraisal valuation beyond such data would be a monumental, not to say superhuman job. Lacking such valuation relegates assessment personnel to taxpayer data and to factors such as market value, income, and reproduction cost. Sales data similar to that available regarding marketed property at local levels is rarely available regarding railroads, because they are seldom sold and when sold at all are moved not in a free market but in controlled conditions. State department assessments described by department assessors as full fair cash value would not likely be described otherwise, **by them**—who expects a state official solemnly to certify that he did not do his duty? Far from having the reliability of an admission against interest, the assertion by a state department assessor that he or his department assessed at full fair cash value has thus instead the dubious nature of a self-serving statement. In addition, the submitted testimony from other cases probing whether state assessment was at full value was largely in the nature of conclusions, in answers to leading questions.[14]

Thus, generalizing too grossly for the subtleties involved but simply enough for clarity: 1) the evidence of full fair

cash value assessments at local level was little more than the presumption, and this was refuted by massive evidence reliable of itself and confirmed by the fact it was the product of recognition by the state legislature, the state department, and the state's local agencies that local assessment was generally less than full fair cash value (the equalization being only how much); 2) the evidence of full fair cash value at state level was little more than the presumption and the claim by the department—repeated over and over, but time and again conclusion and self serving. This was rebutted by the extensive study from the department's own figures. (Exhibits 69 and background exhibits), refuting on this basis the department witnesses' self serving conclusion. Thus, the presumption of full fair cash value assessment was rebutted at both local level and state level. How this was effected is shown below.

Local Assessments.

The Objectors introduced through the witness Garber voluminous evidence prepared by the Department of Revenue showing the ratio between assessments of locally assessed property and the sales price of such property. This evidence was presented in great detail, showing the procedure in the field for gathering data, the mathematical and statistical procedures and safe-guards, the means of weighting and finally the specific data for Madison County even by townships (Objectors' Exhibits 1-14). This was all epitomized in a compilation (Objectors' Exhibit 15) showing the ratios from 1953 through 1960, the last year available, and covering four of the six years involved here. These data support a finding that local property in Madison County was assessed at about 50 per cent of its sale or market value.

Objectors' Exhibits 16 through 25 and Objectors' Exhibit 39, lend some support to these assertions.

Objectors' Exhibit 93, sub-numbers 1 through 33, are in effect more 30.1 cards for assessment sales ratios for certain Madison County property, supposedly all the property sold at above $20,000 for 1957 through 1960. These cards further buttress the showing of approximately 50 percent tax assessment level.

Objectors' Exhibits 96, and sub-numbers 97, 98, 99 and 100, indicate that this array includes commercial and industrial property.

Objectors' Exhibits 101 and sub-numbers, and 102 folio, further support a finding of Madison County assessments, in these cases commercial property in Collinsville, at about 50 per cent (some of them up to 60 per cent).

The Objectors' witness, Weil, after examining the sales ratio study results, testified at length and to the ultimate effect that other property in Madison County was assessed at just less than 50 per cent (May 25-26, Rec. pp. 366, 400, 445, 485; see also pages 492, 493 and 572).

The Collector presents evidence regarding local assessment of the same official character as that used by the Objectors regarding railroad assessment by the state, namely, official certifications of the Department. These would show local property assessed at approximately 60 percent (Objectors' Exhibit 33a). This evidence has the same official authenticity, but is subject to the same limits and reservations in detail as the Objectors' exhibits of railroad assessments at state level.

The Collector also undertakes to show Madison County property is in total valuation more than 30 per cent industrial, and unique in this respect, and that Department sales ratio studies being essentially residential are not as probative as they should be. Objectors' evidence (Exhibits 96 through 100) is to the contrary, that the ratio studies did include commercial and industrial properties. At best for the Collector, this point is negative.

The Collector claims over-all a showing of local assessment at from 60 to 72 per cent of value. On the evidence, the claim is not well taken, the presumption is rebutted by the Objectors' evidence, and the greater weight of the evidence shows local assessment at about 50 per cent of full fair cash value (See especially Objectors' Exhibit 15).

State Assessments (of Railroads).

The Objectors claim that railroad property including theirs has for the period in question been assessed at 100 per cent of its value. They find some basis for this claim in official documents including annual reports of the Department of Revenue, the Department's notices of assessments, and its letters of assessment; in similar letters for prior years; in an order of this court for one railroad in 1957; in the presumption that assessing officials charged with assessing at full fair cash value actually did assess at full fair cash value; and in the testimony of witnesses Koncel, Travis and Reaves, and the deposition evidence of witnesses Danis and Chapman, plus additional depositions of Koncel and Reeves.

Collector's Exhibits 37a, 37b, 37c, 37d, 37e, and 37f are the Department's published notices of assessment of various railroads including those involved here. Objectors' Exhibit 38 and sub-numbers are the Department's certificates of assessment for the comparable years. Objectors' Exhibits 42, 43, 44, 47, 48, 59, 60, 94 and 95 (including some sub-numbers) are letters from the Department to the railroads or related items regarding the assessments published in the official publications. These documents use the phrases "original full assessed valuation", "full assessed valuation", "final assessment", and "full valuation State assessed." They use these phrases in connection with the figures given for the respective railroads for the respective years. They do not give detail

nor any item basis for the result, but they are the determination of the Department, which may be called an opinion, conclusion, or finding. The inference claimed is that in each case the figure is 100 per cent of value.

Annual reports of the Department and its predecessor body the Tax Commission (Collector's Exhibits 1 through 39) give some background on the State assessment process.

Objectors' Exhibit 46, the order of this court (before unification under the Judicial Article called the County Court) uses the phrase "full fair cash value" for one railroad for one year.

The witness Koncel, the revenue department assessor, testified (July 20, Rec. 2593, 2610, 2611) that the Department found "full fair cash value" for all railroads. The same phrase is used in Objectors' Exhibit 71 (pp. 10-11), Objectors' Exhibit 72 (p. 16), Objectors' Exhibit 73 (pp. 9, 10), and Objectors' Exhibit 74 (pp. 8, 9, 22), which are depositions of the same witness taken in other proceedings in Sangamon, Kankakee, Montgomery and Lawrence Counties. The witness Danis, Travis, Chapman and Reeves used similar phrases, likewise in conclusion-type testimony.

This evidence, in the view of the Court, is a massive accumulation of conclusions.

"It is the duty of the Department of Revenue to assess all railroad property, other than non-carrier real estate, at its fair cash value" (Ill. Rev. Stats. 1957, ch. 120, § 561). "(T)here is a presumption of statutory compliance" with this duty, in a case where "there is no evidence in the record to overcome the presumption and proof . . .," such as the Kohorst case.[16]

What about the case where there is evidence to overcome the presumption and proof? That is the case here.

The presumption incorporated in the Kohorst case that Department personnel complied with the statutes and therefore assessed at 100 per cent of full fair cash market value was applied in that case because 1) it was backed by proof and 2) there was no evidence to rebut the presumption. In this case, however, the proof is weak, and there is evidence—evidence which not only rebuts the presumption (which falls upon the presentation of evidence),[17] but stands on its own basis.

The Collector here, instead of showing Department determinations (opinions, conclusions or findings) and undertaking to justify, sustain or rationalize this by mere reference to some detail, went the other way. The Collector started with the detail, applied and explained a mathematical process, and built the result. It used the same original data as that available to the Objectors, the assessment data sheets of the Department for the years 1951 through 1962 (Collector's Exhibit 60).

Like the Objectors' evidence, these data sheets also fell short of providing item information on property items; but this evidence did break down the valuation process and show its component parts and procedural steps to the greatest extent of any evidence in the case—and, considering the vast potential of any other detail for even one railroad for one year, perhaps this was the greatest extent of detail possible. Working from this detail, the witness Cohen constructed charts (Collector's Exhibit 69) showing that the railroad assessments for the six years involved here were much less than 100 per cent of full fair cash value—taking this to be an average of cost, income and market factors.

The use of the three factors, and the application of equal weight to each of them in a straight average formula, the witness Cohen called not only justifiable but essential. He further indicated that any judgment ap-

plied to the formula should be articulated in precise figures, since figures were the end result and anything not articulated in figures was likely to be arbitrary.

The witness Stiles indicated this was the approach before 1948,[18] and the witness Hulman indicated this is now more or less the approach.[19]

Another approach to railroad valuation starting from detail was a sales ratio study submitted by the witness Cohen, again utilizing official figures for all the railroad sales transactions he considered bona fide. Railroads are not frequently sold and these amounted to only ten transactions since 1948, six of these since 1957. They are shown on Collector's Exhibit 104 (Six other transactions he did not include are shown by Objectors' Exhibit 89).

The witness Cohen concluded from his valuation assessment sheets (his first approach) that while cost figures had been going up, railroad assessments had remained relatively stable for the years since World War II, particularly since 1957, and had actually declined in 1961 and 1962 (Collector's Exhibit 59).

On the second approach, the sales ratio studies, he found assessments at a weighted average of 72 per cent of market value.

Ideally, market value can be best proved by a substantial number of bona fide sales transactions. Railroads, however, are seldom sold. And when sold, they are sold not exactly in a free open market, but in the controlled circumstances of a limited monopoly supervised by government agencies, assuring a certain range of fiscal consequences. For railroads, therefore, the market figure is often taken to be the value of their stock and debt. And this figure is used as a valuation item. Another factor used is capitalized income.

Such factors are seldom if ever, used for assessing other property. Ordinary taxpayers' property may be taxed at

full market value based upon cost (a sale item) though it may never have any income producing value and though ownership equity (stock and debt) is not even ascertainable.

The result of this disparity may be that a property tax law is substantially mitigated in favor of the railroad tax payer by use of the income and market factors.

Such an analysis may not call for relationship of the income and market factors, but it does tend to warrant the ⅓ - ⅓ - ⅓ straight average as stressed by the witness, Cohen.

The Court is of the view that the Objectors' evidence of railroad property State assessed was in large part conclusions and presumptions, while the Collector's evidence was in substantial detail utilizing the pointed results from specified data, overcoming the presumption of full assessment as it was not overcome in the Kohorst case, but as that case left open the possibility of its being overcome.[20]

Burden of Proof—Extent Sustained.

The objectors alleged for the tax years here involved that railroad (state) assessment was at 100 per cent of full fair cash value, and that local assessment was at not more than 55 per cent of full fair cash value, a disparity of at least 45 per cent, amounting to a gross discrimination or constructive fraud on the Objectors.

The Objectors had the burden of proving this allegation, either in full as to both state and local assessments, or in substantial part by showing some precise level of state assessment and some precise level of local assessment, with the state level so much above the local level as to be a gross discrimination or constructive fraud,[21] which burden must be sustained by clear and convincing proof.

The Objectors succeeded in showing local assessments at not more than 55 per cent, namely, for the 52 cases,

local assessments ranging from 48.14 per cent of full fair cash value to 51.40 per cent. (Esp. Objectors' Exhibit 15.) In other words, they sustained their burden of proof in full at local assessment.

At state railroad assessment they did not (except in six minor cases) succeed in full, but only in part, in sustaining their burden of proof. The claim of 100 per cent assessment of railroad property by the state was not proved by clear and convincing proof, or even by the greater weight of the evidence. The claim lay in the conclusions, self-serving statements, and answers given to leading questions heretofore discussed. Short of the categorical claim of 100 per cent, the Objectors showed no precise level of state assessment. The Collector did. And the Collector's figures were those supported by the credible evidence, and by the greater weight of the evidence—the only state assessment evidence on which the Court could hang its belief and reliance. (See especially Collector's Exhibit 69.)

In six minor cases, where the Collector's rebutting proof was lacking, and the Objectors could stand more securely on the presumption thus unrebutted, the Objectors sustained their burden of proving 100 per cent state assessment of railroads, and thus were entitled to relief as fully as claimed. In the other cases, the Collector's rebutting proof was entitled to the greater weight and the Objectors only partly sustained their burden, the net reliable proof showing state assessments ranging from as high as 85 per cent of full fair cash value to as low as 58 per cent. (See Schedule.) These proofs can be most conveniently shown on a table, including for each railroad tax year the precise percentage of full fair cash value addressed by local assessors against local property, the percentage assessed by state assessors against railroad property, the difference, and the percentage disparity. Such a schedule is essential as a basis for the determination of tax refunds in each case under the Hillison case.

The schedule, in table form as computed by the Court, follows:

Schedule of Assessment Levels

		a	b	c	c/a
		Railroad (State)	Local	Difference	% Disparity
C. B. & Q.	1957	75.30	48.14	27.16	36.06
	1958	71.60	51.40	20.20	28.21
	1959	72.70	49.96	22.74	31.31
	1960	73.00	49.78	23.22	31.80
	1961	77.00	50.00	27.00	35.06
	1962	76.00	50.00	26.00	34.21
C. & N.	1957				*
	1958	70.70	51.40	19.30	27.29
	1959	67.80	49.96	17.84	26.31
	1960	63.00	49.78	13.22	20.98
	1961	65.00	50.00	15.00	23.07
	1962	61.00	50.00	11.00	18.03
I. C.	1957				*
	1958				*
	1959	68.00	49.96	18.04	25.52
	1960	67.00	48.78	17.22	25.70
	1961	69.00	50.00	19.00	27.53
	1962	70.00	50.00	20.00	28.57
N. Y. C.	1957	72.00	48.14	23.86	33.13
(C. C. C. & St. L.)	1958	69.50	51.40	18.15	26.11
	1959	70.00	49.96	20.04	28.62
	1960	71.00	49.78	21.22	29.88
	1961	75.00	50.00	25.00	33.33
	1962	81.00	50.00	31.00	38.27
Pa.	1957				*
	1958				*
	1959				*
	1960				*
	1961	71.00	50.00	21.00	29.57
	1962	72.00	50.00	22.00	30.55
G. M. & O.	1957				*
	1958	67.20	51.40	15.80	23.51
	1959	72.00	49.96	22.04	30.61
	1960	72.00	49.78	22.22	30.86
	1961	74.00	50.00	24.00	32.43
	1962	74.00	50.00	24.00	32.43

* Valuation objection for this railroad for this tax year was not filed, or has been settled, or in any event is not at issue.

Schedule of Assessment Levels

		a	b	c	c/a
		Railroad (State)	Local	Difference	% Disparity
Wabash	1957				*
	1958				*
	1959				*
	1960				*
	1961	64.00	50.00	14.00	21.87
	1962	67.00	50.00	17.00	25.33
C. & E. I.	1957	60.00	48.14	11.86	19.76
	1958	58.00	51.40	6.60	11.37
	1959	62.30	49.96	12.34	19.80
	1960	60.00	49.78	10.22	17.03
	1961	61.00	50.00	11.00	18.03
	1962	64.00	50.00	14.00	21.87
N. Y. Ch. & St. L.	1957				*
	1958				*
	1959	71.00	49.96	21.04	29.63
	1960	71.00	49.78	21.22	29.88
	1961	72.00	50.00	22.00	30.55
	1962	70.00	50.00	20.00	28.57
Terminal of St. L.	1957				*
	1958				*
	1959				*
	1960				*
	1961	81.00	50.00	31.00	38.27
	1962	82.00	50.00	32.00	39.02
Ill. Term.	1957				*
	1958				*
	1959				*
	1960				*
	1961	77.00	50.00	27.00	35.06
	1962	85.00	50.00	35.00	41.17
Alt. & So.	1957				*
	1958				*
	1959				*
	1960				*
	1961	77.00	50.00	27.00	35.06
	1962	77.00	50.00	27.00	35.06

* Valuation objection for this railroad for this tax year was not filed, or has been settled, or in any event is not at issue.

Schedule of Assessment Levels

		a	b	c	c/a
		Railroad (State)	Local	Difference	% Disparity
Mo.-Ill. B&B	1957	100.00	48.14	51.86	51.86
	1958	100.00	51.40	48.60	48.60
	1959	100.00	49.96	50.04	50.04
	1960	100.00	49.78	50.22	50.22
	1961	100.00	50.00	50.00	50.00
	1962	100.00	50.00	50.00	50.00

* Valuation objection for this railroad for this tax year was not filed, or has been settled, or in any event is not at issue.

The Objectors claim these determinations constitute "findings" which cannot be substituted by the Court for the administrative findings of the assessing bodies. This claim is not well taken. On the contrary, the findings made by the assessing authorities and the determinations made here by the Court are not even of the same nature. The assessing authorities of the state regarding railroads and of the local taxing authorities regarding other property made findings in dollar figures of the value of property assessed. The Court here does not even deal in dollars, but in percentages. It makes no findings at all. It determines only whether the assessing authorities were right, that is, at 100 per cent of value (as claimed locally by the Collector and as claimed statewide by the Objectors) in the findings that the assessing authorities made—and if they were not right, then to what extent they were wrong, that is, to what extent they fell short of 100 per cent. The Court determined that the findings of neither the local nor the state assessors were 100 per cent value findings, and the foregoing schedule shows the extent to which their findings as shown by the evidence fell short of being 100 per cent value findings. This kind of determination is of course the very determination the Objectors asked the Court to make. To call such a determination "findings" and thus say now that the Court could not make it is to

quarrel not with the Court's authority or procedure but with the result:

Judgments in accord with these views were duly entered, utilizing the figures from the schedule of assessment levels, inserting appropriate figures in each of the 52 cases consolidated for trial. Since it could not be concluded that either side had "won"—the railroads having received very substantial but by no means total relief—the Court prepared its own judgment order. This included a provision for refund in accord with the Hillison case guide. (A copy of this judgment order is appended.) No other "conclusion" for this statement need be made.

Pursuant to Supreme Court Rule 36c this statement is included in the report of proceedings at the trial, with copies for the convenience of counsel and the Court on appeal.

James O. Monroe, Jr., /s/
Circuit Judge.

NOTES.

* Deciding this case is so largely a matter of evidence rather than law, and the principles of evidence involved are so elementary, that the customary citations of authority would unduly encumber this statement and are avoided except as noted. There is appended for the information of the Court on appeal a list of authorities briefed by the court here and studied and considered as requested by both sides.

[1] Such material may become a critical basis for decision. See the use of non-legal writing in Brown v. Board, 347 U. S. 483, 494, note 11 (1954), perhaps the most momentous case of our times.

[2] Cleary, Illinois Evidence (2nd ed.), sec. 7.6; Knight v. Collings, 227 Ill. 348, 353 (1907), action at law; Oswald v. Nehls, 233 Ill. 438, 444 (1908), suit in chancery.

[3] The position is stated at Rec. pp. 691-701, 962-965, and 973-975. The two principal cases are C. & N. W. Ry. Co. v. Dept., 6 Ill. 2d 278 (1955), and C. B. & Q. R. R. Co. v. Dept., 17 Ill. 2d 376 (1959). Peo. ex rel. Enrietta v. G. M. & O. Rd. Co., 29 Ill. 2d 605 (1963), involves the same point indirectly.

[4] Todd v. Annunzio, 410 Ill. 343, 348 (1951); Hughes v. Ill. Publ. Aid. Comm., 2 Ill. 2d 374 (1954); I. L. P., Estoppel, sec. 33, esp. notes 84-90, incl.

[5] Constitution of Illinois, Art. IX, sec. 1; I. L. P., Revenue, secs. 15 et seq.

[6] Ill. Rev. Stats. 1963, secs. 501, 560, 561, 611, and 627-632 incl. (Revenue Act of 1939, secs. 20, 79, 80, 130, and 146-151 incl.).

[7] Ill. Rev. Stats. 1963, secs. 627-632 incl. (Revenue Act of 1939, secs. 146-151 incl.).

[8] See testimony of Weil, Rec. pp. 472 et seq., and of Cohen, Rec. pp. 948-958, 1508, 1509, 1515, 1530, 1567, 1568, 1573, 1638, 1650-1655, 1716.

[9] Cleary, Illinois Evidence (2nd ed.), secs. 4.11 through 4.16, esp. secs. 4.14 and 4.15; and Wigmore, Evidence (3rd ed.), secs. 2490-2493.

[10] See esp. Collector's Exhibit 69 and background exhibits.

[11] Ill. Rev. Stats. 1963, secs. 627-632, incl.

[12] Cleary, Illinois Evidence (2nd ed.), sec. 17.11.

[13] See, e. g., testimony of Koncel, Rec. pp. 2545 (volume of work), 2576-2580 (arbitrary assessment reductions), and 2619-2622 (range of variance in assessments). He said that there was no specific weight assigned to a cost indicator in applying the judgment factor (Rec. p. 2592). He said there was a "tolerance between railroad assessors in taking the same figures and arriving at a result," a tolerance of 15 per cent; and that if he brought in different assessors to do his job in 1961 and 1962 they might have reached figures that were 15 per cent different (Rec. p. 2619). This 15 per cent "could be either way . . . up or down . . . from the figure determined (by him) in 1961 and 1962" (Rec. pp. 2621, 2622).

[14] See Koncel depositions, Objectors' Exhibits 71 (Ex. pp. 10, 11), 72 (Ex. p. 16), 73 (Ex. pp. 9, 10), and 74 (Ex. pp. 8, 9, 22). See also Danis depositions, Objectors' Exhibit 76 (Ex. pp. 9, 18, 20).

[15] Reference is to Exhibit pages, not Record pages.

[16] 22 Ill. 2d 104, 109 (1961).

[17] Cleary, Illinois Evidence (2nd ed.), secs. 4.14 and 4.15.

[18] Rec. pp. 2283 et seq.

[19] Rec. pp. 1069 et seq.

[20] 22 Ill. 2d 104, 109 (1961). Peo. ex rel. Hillison v. C. B. & Q. R. R. Co., 22 Ill. 2d 88, 102 (1961), is to the same effect, decided on the basis that there was "no evidence in the record to overcome the presumption" (102), but likewise clearly implying a different result if there is such evidence.

[21] Kohorst, supra, 109.

REFERENCES. [a]

[a] Omitted here. Set forth at pp. 27-30 of People's Additional Abstract, II "Illinois Supreme Court Record" 71 (27-30).

Form of Judgment Order.

In the Circuit Court,
Third Judicial Circuit,
Madison County, Illinois.

People of the State of Illinois, ex rel. Treasurer and ex-officio Collector of Madison County, Illinois (Now George Musso, heretofore James T. Callahan and Dan McGee), Applicant-Plaintiff, v. .... Objector-Defendant,	Application for Judgment for Taxes, with Tax Objections. Tax Year ..... Former County Court Case No. ..... Consolidated Herein With Other Cases.

FINAL ORDER ON VALUATION OBJECTION AND CLAIM OF DISCRIMINATORY ASSESSMENT.

The Application of the People of the State of Illinois, on the relation of and through the Treasurer and Ex-Officio Collector of Madison County, Illinois, for judgment for taxes against the Objector, and the valuation objection

of the Objector to its taxes and to such a judgment, having come on for hearing and having been presented, heard, and argued, and having been considered by the Court, the Court now enters its order, stating, reciting, finding or adjudging as follows:

Proceedings.

1. The Applicant for judgment and Plaintiff is the People of the State of Illinois, on the relation of and through the Treasurer and ex-officio Collector of Madison County, Illinois, who now is George Musso, and who, as his predecessor in office, from December 1954 to December 1958 was James T. Callahan, and from December 1958 to December 1962 was Dan McGee; and he or they may be hereinafter called the Collector, Applicant, Plaintiff or People.

2. The Objector and Defendant, is .....
.....,
a corporation; and it may be hereinafter called the Objector or Defendant.

3. The tax year is the Objector's tax year .....

4. The Objector has duly paid its taxes for this year, but has made such payment in part under protest, and in this regard has filed it objection, objecting to such taxes and to any judgment against it for such protested taxes, and claiming a refund of such protested taxes paid.

5. By proper proceedings duly shown of record, this case has been consolidated for hearing with other cases, involving this Objector for other tax years, and involving other Objectors for this or other tax years; and in so far as they may be applicable to this case, any or all of the things presented in any or all of the consolidated cases have been considered as applicable in and to this case.

6. In this case or in the consolidated cases, there have been:

a. Certain pleadings and papers filed by the Collector, and certain pleadings and papers filed by the Objector.

b. Judicial notice taken by the Court of the files and dockets in these cases.

c. Stipulations entered into between and among the parties, regarding proceedings, records, exhibits, and evidence, including records of the County Clerk, the County Treasurer, the Board of Review, and the Recorder of Madison County, Illinois, the Department of Revenue of the State of Illinois, the Illinois Commerce Commission, and the Interstate Commerce Commission, made subject to consideration in this case to the extent that any party placed reliance on such records and noted such reliance for the Court's attention, and with appropriate provision for excerpting the parts thereof relied on for the record before this Court.

d. Evidence, including testimony heard in court hearings and evidence depositions duly transcribed and presented in court, together with exhibits presented in hearings or depositions and duly admitted, including record exhibits hereinabove mentioned.

e. Presentations of law, through briefs, memoranda, letters, and oral assertion.

f. Argument, duly made orally and in writing, from time to time and in conclusion.

g. Form of orders, proposed and suggested orally and in writing.

h. Computations for proposed and suggested refunds or judgments, made orally and in writing, claimed by the respective parties in substance and adaptable regarding forum in any event.

And all such matters are taken as properly before the Court, and objections to them are taken as waived, all unless and except to the extent otherwise noted.

7. The Court has jurisdiction of the subject matter and the parties, in regard to the application for judgment and to the objections and to all matters pertinent to them.

Recitals or "Findings".

8. The Collector's application for judgment was made in apt time and in proper form, and formal proof thereof is taken as made, without objection, or with objection waived.

9. The Objector's objection to taxes and to judgment was made in apt time and in proper form, and formal proof thereof is taken as made, without objection, or with objection waived.

10. The issue here involves the Objector's objection, or that part of it, relating to the assessed valuation of the Objector's property, rather than to the legality of any tax rates, which rates to the extent of their validity may however hereafter be considered in computing any refund or judgment to be made after decision of the valuation matters at issue here.

11. The State of Illinois, through its Department of Revenue, pursuant to statute, assessed the Objector's railroad property (except non-carrier real estate, locally assessed) as a unit, state-wide, including its railroad property in Madison County, at what purported to be its fair cash value; which the Objector claims was in effect its full fair cash value (100%), and which the Collector claims was not.

12. The State of Illinois and County of Madison, through proper local assessing authorities and the Department of

Revenue, pursuant to statute, assessed and through a duly determined multiplier equalized other property in Madison County at what purported to be its fair cash value; which the Collector claims was in effect its full fair cash value (100%), and which the Objector claims was not.

13. Both the Collector and the Objector presented evidence regarding the levels of assessment of railroad property state assessed and of locally assessed property, which evidence is before the Court to be considered by it, regardless of what party produced it.

14. The Objector alleges for the tax year here involved that its railroad (state) assessment was at 100 per cent of full fair cash value, and that local assessment was at not more than 55 per cent of full fair cash value, a disparity of at least 45 per cent, amounting to a gross discrimination or constructive fraud on the Objector.

15. The Objector has the burden of proving this allegation, either in full as to both state and local assessments, or in substantial part by showing some precise level of state assessment and some precise level of local assessment, with the state level so much above the local level as to be a gross discrimination or constructive fraud, which burden must be sustained by clear and convincing proof.

16. This case is here on the merits, on the issue of whether or not the Objector's burden of proof has been sustained, and if so to what extent.

17. This Court having general jurisdiction to enter judgments at law and to prevent or provide remedies against fraud, and having been asked by the Collector, through its application for judgment, and by the Objector, through its objection, to take jurisdiction of the application and objection and the issue thereunder, does take and exercise its jurisdiction to determine whether the Collector is en-

titled to judgment and if so for how much, and to determine whether the Objector has suffered any discrimination or fraud and if so to what extent and whether it is entitled to any refund of taxes paid and if so how much.

18. The Objector has sustained the burden of proof to the extent that there is shown in the evidence, and by the greater weight of the evidence, the following levels of assessment for the tax year mentioned:

	Level of Assessment.
Objector's state-assessed railroad property, including that portion in Madison County	....% (a)[1]
Locally assessed property in Madison County	....% (b)[2]
Arithmetical Difference (a — b)	.... (c)[3]
Percentage Disparity (c ÷ a)	....% [3]

[1] See especially Collector's Folio Exhibit 60 summarized in Collector's Exhibit 69, Collector's Exhibit 104, and testimony of the witness Cohen.

[2] See especially Objector's Folio Exhibit 14 summarized in Objector's Exhibit 15, and testimony of the witness Weil.

[3] Computation of any refunds rising from this difference or disparity must be in accord with Peo. ex rel. Hillison v. C. B. & Q. R. R. Co., 22 Ill. 2d 88, 102-103. The amount of refund may vary among various taxing districts in accord with the ratio of railroad property to total property in the district. And the over-all amount of refund may of course vary from the initial arithmetical difference or percentage disparity shown above.

and this disparity was so great as to constitute a gross discrimination against the Objector; but beyond this extent and otherwise, the Objector has failed to sustain the burden of proof.

19. No actual fraud on the Objector was intended by either state or local assessment authorities and none is claimed or proved; nevertheless, the foregoing disparity

in assessment was so great as to be in part constructively fraudulent and to warrant in part the relief claimed by the Objector.

20. By reason of the disparity in assessments shown, and to the extent thereof, but to that extent only, the Objector has been damaged, the Objector's objections should be sustained, judgment should be denied, and the Objector should have a refund.

21. The measure of the Objector's damage and refund should be the difference between its taxes for the year mentioned and the amount its taxes for that year would have been had all the property in the County been assessed at full cash value.*

22. The amount of any such refund should be determined only after consideration of the amount of any other refunds (including refunds for objections regarding rates) heretofore made or determined to be made, with any appropriate offset or reduction so as to preclude any double recovery; and such refund should in any case not exceed the amount of those taxes paid which were paid under protest.

23. In all other respects on this issue, and beyond the extent indicated, the Objector has not been damaged, the Objector's objections should be denied, judgment should be granted, and the Objector's taxes paid should be retained by the Collector and distributed by him to the taxing districts concerned.

Decision and Judgment.

It is therefore considered, ordered, adjudged, and decreed as follows:

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* See Hillison, 102-103.

I. To the extent indicated and the damage and refund due, the Objector's objections are sustained, the Collector's application for judgment is denied, and the Collector is ordered to refund to the Objector the amount due the Objector.

II. The measure of this damage and refund is the difference between the Objector's taxes for the year mentioned and the amount its taxes for that year would have been had all property in the County been assessed at full fair cash value.

III. The damage and refund due shall be determined only after consideration of the amount of any other refunds (including refunds for rate objections) heretofore made or determined to be made, with any appropriate offset or reduction so as to preclude any double recovery; and such refund shall not exceed the amount of those taxes paid which were paid under protest.

IV. Beyond this extent of damage and refund indicated, and otherwise and to all other extent, the Objector's objections are overruled, the Collector's application for judgment is granted, and the Court hereby enters judgment for the Collector and against the Objector, and the Collector is ordered to retain for distribution to the taxing districts concerned the remaining balance of all such taxes extended or paid by the Objector (together with any amount to be retained by reason of offset or limitation).

V. The amount to be refunded to the Objector and the amount to be retained by the Collector and the distribution by him to the various taxing bodies or districts, shall be hereafter computed by representatives of the Collector and of the Objector, with such computation to be submitted, mutually checked, verified, and then approved by this court.

VI. The Court retains jurisdiction of this cause for the purpose of approving or correcting such computation and implementing the process of refund, retention and distribution of the tax moneys involved.

VII. The finality of this order, judgment and decree shall not be affected by any delay in the ultimate computation of the dollar amounts to be refunded, retained, or distributed.

VIII. There is no just reason for delaying the enforcement or appeal of this order, judgment and decree.

Enter this ..... day of August, 1964.

.....

Circuit Judge.

APPENDIX G.

From the Illinois Revenue Act of 1939 as Amended.[a]

I. **Statutory Duty of Director of Revenue to Equalize Local Assessments.**

A. **Prior to January 1, 1946.**

"The Department **may** so lower or raise the total assessed value in any county as returned by the County Clerk as shall make the property in such county bear a **just relation** to the assessed value of property in other counties. . . ." Ill. Rev. Stat. 1943, Ch. 120, § 623 (emphasis added).

B. **January 1, 1946-July 22, 1959.**

". . . The Department **shall** lower or **raise the total assessed value of property in any county as returned by the County Clerk so that such property will be assessed at its full, fair cash value.** . . . By means of a comparison of assessed valuations as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper, and reasonable the Department shall annually ascertain and determine the percentage relationship for each county of the State, between the valuations at which locally assessed property is listed by assessors and revised by boards of review or boards of appeals, as

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[a] The statutory assessment standard in Illinois has been full (100%) value since 1927 with regard to both locally assessed and state assessed property. See People's Second Brief, pp. 1-2B, II Ill. Sup. Ct. Rec. 88. Statutory provisions, concerning local assessors are in Ill. Rev. Stat., 1965, Ch. 120, §§ 501, 502, 483-497. § 498 explicitly divides assessment duties between local assessors and the Department of Revenue on the basis of type of property.

the case may be, and the estimated full, fair cash value of such property . . . with the ratio so ascertained . . . for each county, **the Department shall** then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in **order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent.**" Ill. Rev. Stat. 1945, Ch. 120, § 627 (emphasis added).

C. **July 22, 1959-August 2, 1965.**

". . . The Department **shall** lower or raise the total assessed value of property in any county or assessment district in a county having 500,000 or more inhabitants as returned by the County Clerk so that such property will be **assessed at its full, fair cash value** in any year in which a quadrennial assessment is made in such county or in an assessment district in a county having 500,000 or more inhabitants. **The equalization factor thus determined shall be used in like manner in each of the three succeeding years. . . .**" Ill. Rev. Stat. 1961, Ch. 120, § 627 (emphasis added).

II. **Statutory Duty of Director of Revenue to Assess Railroad Property.**

Standard of Assessment.

"The Department shall assess all property **owned** or **used** by railroad companies **operating** within this State as of April first annually, except property found by the Department to be non-carrier real estate . . . The Department **shall,** in determining **the fair cash value** of the property assessed by it, **value all the property of any railroad company as a unit,** but shall make due allowance for any non-carrier real estate. For the purpose of determining the fair cash value of the property of any railroad com-

pany the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness or shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness, the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; **and such other information as the Department may consider as bearing on the fair cash value of the property of a railroad company....**" Ill. Rev. Stat. 1937, 1963, Ch. 120, § 563 (emphasis added).

Property to Be Assessed.

"The term 'operating property' shall mean and include all tracks right of way, all structures and improvements on such right of way, all rights and franchises, all rolling stock and car equipment, and all other property, real or personal, tangible or intangible connected with or used in the operation of the railroad including real estate contiguous to railroad right of way or station grounds held for reasonable expansion or future development." Ill. Rev. Stat., 1937-1963, Ch. 120, § 560.

Legislative Direction on Cost Data.

"Each year every railroad company in this State shall return to the Department, in addition to any other information required by this Act, sworn statements or schedules as follows: . . . (8) The reproduction cost of the property within Illinois and the total reproduction cost of all property of such company. Said reproduction cost, so far as applicable, shall be last determined by the United States Interstate Commerce Commission, or other competent authority, plus additions and betterments and depreciation to the December 31, next preceding the assessment." Ill. Rev. Stat., 1937-1963, Ch. 120, § 563.

Interstate Allocation.

"If any railroad company owns or uses operating property partly within and partly without this State, the commission **shall determine the value of the entire operating property of such railroad** but shall take only that part of such entire value as is represented by the average percentage of (a) the length of all track including main, second and additional main track, side track and turnouts within this State, (b) its gross revenues arising from railroad operations in this State, (c) the reproduction cost of its operating property within this State, as determined by the Interstate Commerce Commission of the United States, or other competent authority, plus additions and betterments, less, retirements and depreciation. Provided nothing in this section shall be construed to preclude the use or substitution of such other factors or methods as may appear reasonable and necessary in determining for any railroad the proportion of its operating property or any part thereof within this State. Ill. Rev. Stat., 1937-1963, Ch. 120, § 565.

Distribution of Railroad Assessments (1937-1963).

"The full fair cash value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceed $1,000 which shall be deemed to have a situs in the taxing district in which the same are located. **The Department shall equalize** and distribute **the full, fair cash value of the property of every railroad company** (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county

clerks of the respective counties who shall extend taxes against such values the same as against other property in such taxing districts. Ill. Rev. Stat., 1937-1963, Ch. 120, § 567 (emphasis added).

1963 Equalization Amendment (1963).

". . . The Department shall determine the equalized assessed value of the property of every railroad company, other than non-carrier real estate, by applying to its determination of the fair cash value of such property of every railroad company an equalization factor which factor shall be the statewide average ratio of the equalized assessed value of locally assessed property to the full, fair cash value of such locally assessed property." Ill. Rev. Stat., 1965, Ch. 120, § 561 (August 26, 1963).

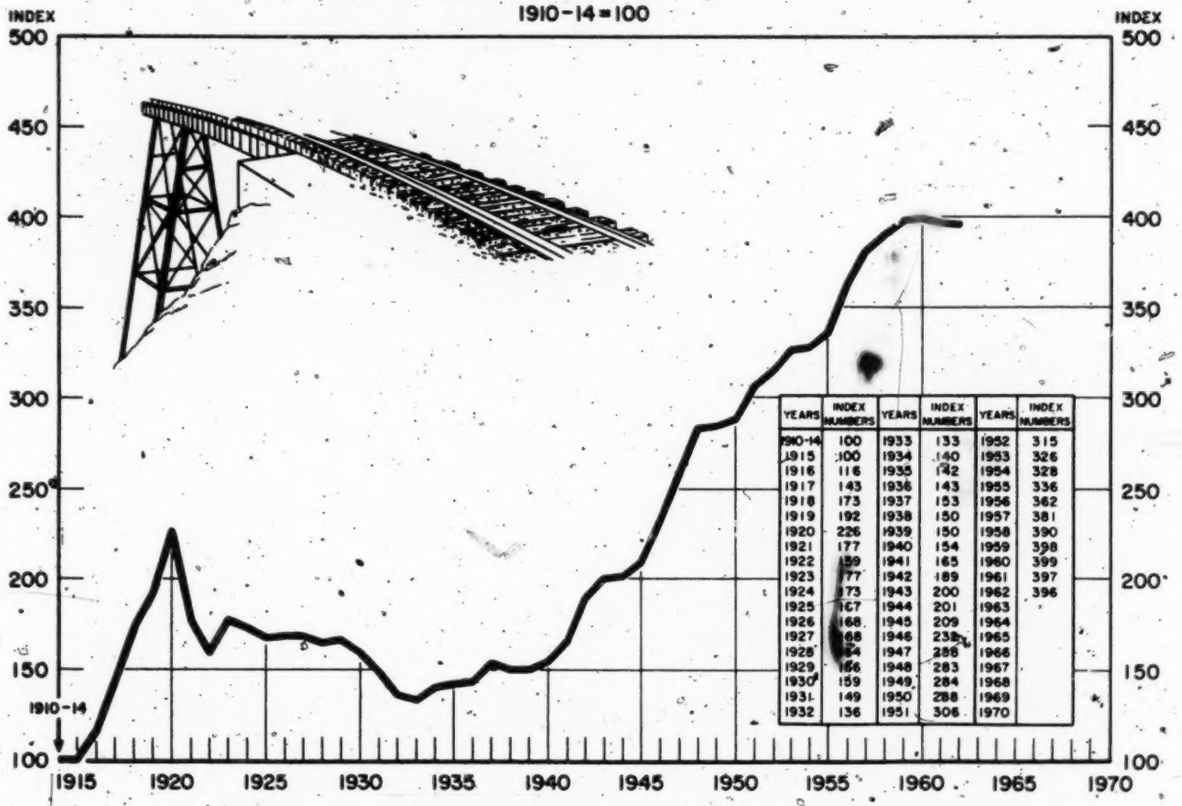
"The equalized assessed value of the operating property . . . when determined as prescribed in Section 80 of this Act shall be listed and taxed in the several taxing districts. . . ." Ill. Rev. Stat., 1965, Ch. 120, § 567.

APPENDIX H.

(Based on Evidence in the Record.)

Inflating Prices and Costs.

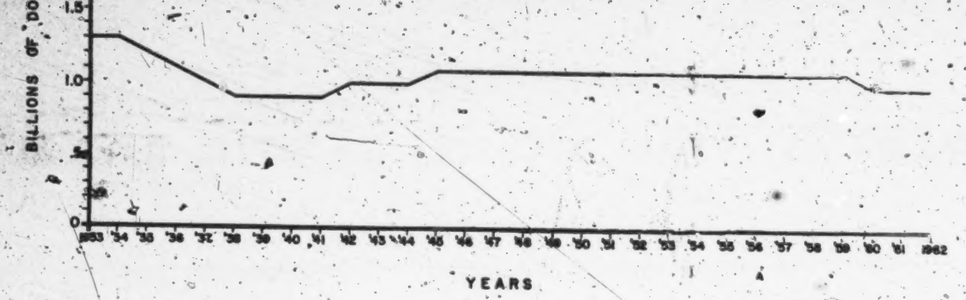
RELATIVE COSTS OF RAILROAD CONSTRUCTION FOR THE UNITED STATES, 1910-1962



YEARS	INDEX NUMBERS	YEARS	INDEX NUMBERS	YEARS	INDEX NUMBERS
1910-14	100	1933	133	1952	315
1915	100	1934	140	1953	326
1916	116	1935	142	1954	328
1917	143	1936	143	1955	336
1918	173	1937	153	1956	362
1919	192	1938	150	1957	381
1920	226	1939	150	1958	390
1921	177	1940	154	1959	398
1922	159	1941	165	1960	399
1923	177	1942	189	1961	397
1924	173	1943	200	1962	396
1925	167	1944	201	1963	
1926	168	1945	209	1964	
1927	168	1946	232	1965	
1928	164	1947	286	1966	
1929	166	1948	283	1967	
1930	159	1949	284	1968	
1931	149	1950	288	1969	
1932	136	1951	306	1970	

Administrative Suppression of Inflation in Railroad Property Assessment in Illinois.

"FAIR CASH VALUE" OF RAILROAD OPERATING PROPERTY IN ILLINOIS, 1933-1962[1]



[1] Based on Property Tax Statistics of Illinois Tax Commission, 1933-1942, and Department of Revenue, 1943-1962; on the premise that since 1946 assessment equals "Fair Cash Value."

Data Proving the Trial Court's Interpretation of "Judgment Factor" Reductions as an Arbitrary Technique to Eliminate Inflation From State Assessments of Railroad Property in Illinois, 1946-1962.

	1946[a]	1947	1948[b]	1949[c]	1950[d]	1951	1952	1953	1954	1955	1956	1957	1958	1959[e]
Total Assessment by Director of Revenue of Railroad Property	1,093,746,500	1,077,459,000	1,078,971,000	1,086,196,000	1,075,593,000	1,084,964,000	1,088,193,000	1,096,730,000	1,090,815,000	1,095,390,000	1,098,034,000	1,107,399,000	1,090,335,000	1,055,253,000	1,0
Chicago, Burlington and Quincy[h]														
Capitalized Income[i]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					152,112,000	155,355,000	153,242,000	149,811,000	154,871,000	150,943,000	151,728,000	142,332,000	130,138,000	1
Stock and Debt						112,475,000	114,932,000	116,242,000	120,167,000	121,844,000	128,912,000	135,519,000	139,027,000	133,578,000	1
RCNLD Adjusted[j]						219,050,000	243,517,000	248,608,000	245,050,000	276,975,000	280,480,000	298,303,000	334,100,000	328,093,000	3
Formulaic Average						161,212,000	171,270,000	172,697,000	171,676,000	184,563,000	186,778,000	195,183,000	205,153,000	197,270,000	1
Less "Judgment Factor"[k]						20,157,000	30,130,000	29,547,000	28,476,000	41,377,000	42,178,000	47,983,000	58,153,000	53,770,000	
ASSESSMENT	133,900,000	133,900,000	140,000,000	141,000,000	140,000,000	142,809,000*	143,500,000*	144,600,000*	144,600,000*	144,600,000*	144,600,000*	147,000,000*	147,000,000	143,500,000	1
Chicago & Northwestern[l]														
Capitalized Income[i]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					39,568,000	35,732,000	36,294,000	34,827,000	33,322,000	32,119,000	21,727,000	22,250,000	22,719,000	
Stock and Debt						41,289,000	41,655,000	43,996,000	49,198,000	52,722,000	56,132,000	65,546,000	68,178,000	73,222,000	
RCNLD Adjusted[j]						192,820,000	200,545,000	213,000,000	193,083,000	205,720,000	200,882,000	215,922,000	236,145,000	235,984,000	2
Formulaic Average						91,225,000	92,644,000	97,730,000	92,370,000	97,255,000	96,378,000	101,065,000	108,847,000	110,642,000	1
Less "Judgment Factor"[k]						2,225,000	4,894,000	10,980,000	7,870,000	15,805,000	15,408,000	24,565,000	31,847,000	35,642,000	
ASSESSMENT	90,000,000	90,000,000	95,000,000	95,000,000	90,250,000	89,000,000	87,750,000	86,750,000[m]	84,500,000	81,450,000	80,970,000	76,500,000	77,000,000	75,000,000	
Illinois Central (non-charter property)														
Capitalized Income[i]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					92,529,000	99,198,000	104,161,000	105,046,000	107,874,000	102,941,000	100,091,000	91,842,000	84,692,000	
Stock and Debt						62,342,000	62,462,000	66,303,000	67,414,000	71,826,000	72,236,000	73,640,000	71,600,000	69,045,000	
RCNLD Adjusted[j]						98,341,000	107,259,000	127,504,000	130,895,000	141,322,000	143,898,000	149,744,000	162,030,000	168,640,000	1
Formulaic Average						84,404,000	89,640,000	99,323,000	101,118,000	107,097,000	106,358,000	107,825,000	108,490,000	107,535,000	1
Less "Judgment Factor"[k]						12,504,000	17,140,000	25,823,000	26,918,000	32,207,000	31,358,000	32,325,000	33,790,000	34,325,000	
ASSESSMENT	70,000,000	69,000,000	70,500,000	70,500,000	70,500,000	71,900,000*	72,500,000*	73,500,000*	74,200,000*	74,800,000*	75,000,000*	75,000,000*	74,700,000*	73,000,000*	
New York Central														
Capitalized Income[i]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					29,882,000	36,142,000	41,132,000	45,551,000	47,245,000	54,076,000	54,166,000	50,217,000	40,840,000	
Stock and Debt						39,600,000	41,108,000	43,996,000	47,197,000	50,932,000	53,607,000	51,393,000	50,600,000		

f Illinois Tax Commission, 1933-1942, and Department of Revenue, 1943-1962.
ssessment equals "Fair Cash Value."

Data Proving the Trial Court's Interpretation of "Judgment Factor" Reductions as an Arbitrary Technique to Eliminate Inflation From State Assessments of Railroad Property in Illinois, 1946-1962.

946[a]	1947	1948[b]	1949[c]	1950[d]	1951	1952	1953	1954	1955	1956	1957	1958[e]	1959[e]	1960[f]	1961[g]	1962[g]
,746,500	1,077,469,000	1,078,971,000	1,086,196,000	1,075,593,000	1,084,964,000	1,088,193,000	1,096,730,000	1,090,815,000	1,095,390,000	1,098,034,000	1,107,399,000	1,090,335,000	1,055,283,000	1,032,378,000	1,000,305,000	993,358,000
					152,112,000	155,355,000	153,242,000	149,811,000	154,871,000	150,943,000	151,728,000	142,332,000	130,138,000	121,803,000	109,585,000	100,595,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					112,475,000	114,932,000	116,242,000	120,167,000	121,844,000	128,912,000	135,519,000	139,027,000	133,578,000	132,428,000	127,424,000	123,973,000
					219,050,000	243,517,000	248,608,000	245,050,000	276,975,000	280,480,000	298,303,000	334,100,000	328,093,000	324,150,000	311,800,000	315,165,000
					161,212,000	171,270,000	172,697,000	171,676,000	184,563,000	186,778,000	195,183,000	205,153,000	197,270,000	192,794,000	182,936,000	179,911,000
					20,157,000	30,130,000	29,547,000	28,476,000	41,377,000	42,178,000	47,983,000	58,153,000	53,770,000	51,794,000	42,486,000	41,961,000
,900,000	133,900,000	140,000,000	141,000,000	140,000,000	142,809,000*	143,500,000*	144,600,000*	144,600,000*	144,600,000*	144,600,000*	147,000,000*	147,000,000	143,500,000	141,000,000	140,450,000	137,950,000
					39,568,000	35,732,000	36,194,000	34,827,000	33,322,000	32,119,000	21,727,000	22,250,000	23,719,000	25,224,000	23,890,000	21,486,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					41,289,000	41,655,000	43,996,000	49,198,000	52,722,000	56,132,000	65,546,000	68,178,000	73,222,000	73,256,000	63,494,000	63,818,000
					192,820,000	200,545,000	213,000,000	193,083,000	205,720,000	200,882,000	215,922,000	236,145,000	235,984,000	247,975,000	239,393,000	249,056,000
					91,225,000	92,644,000	97,730,000	92,370,000	97,255,000	96,378,000	101,065,000	108,847,000	110,642,000	115,850,000	115,592,000	114,786,000
					2,225,000	4,894,000	10,980,000	7,870,000	15,805,000	15,408,000	24,565,000	31,847,000	35,642,000	42,850,000	40,092,000	43,786,000
,000,000	90,000,000	95,000,000	95,000,000	90,250,000	89,000,000	87,750,000	86,750,000[m]	84,500,000	81,450,000	80,970,000	76,500,000	77,000,000	75,000,000	73,000,000	75,500,000	71,000,000
					92,529,000	99,198,000	104,161,000	105,046,000	107,874,000	102,941,000	100,091,000	91,842,000	84,892,000	79,110,000	66,375,000	58,927,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					62,342,000	62,462,000	66,303,000	67,414,000	71,826,000	72,236,000	73,640,000	71,600,000	69,045,000	66,320,000	59,568,000	54,609,000
					98,341,000	107,259,000	127,504,000	130,895,000	141,322,000	143,898,000	149,744,000	162,030,000	168,640,000	171,895,000	180,687,000	177,509,000
					84,404,000	89,640,000	99,323,000	101,118,000	107,007,000	106,358,000	107,825,000	108,490,000	107,525,000	105,775,000	102,310,000	97,015,000
					12,504,000	17,140,000	25,823,000	26,918,000	32,207,000	31,358,000	32,325,000	33,790,000	34,325,000	34,525,000	31,460,000	28,990,000
,000,000	69,000,000	70,500,000	70,500,000	70,500,000	71,900,000*	72,500,000*	73,500,000*	74,200,000*	74,800,000*	75,000,000*	75,000,000*	74,700,000*	73,000,000*	71,250,000*	70,750,000	68,025,000
					29,882,000	36,142,000	41,132,000	45,551,000	47,245,000	54,076,000	54,166,000	50,217,000	40,840,000	38,727,000	37,833,000	17,479,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					39,600,000	41,108,000	43,996,000	47,197,000	50,932,000	53,607,000	51,393,000	50,600,000	48,240,000	46,971,000	41,690,000	38,072,000
					120,418,000	123,480,000	131,721,000	136,960,000	166,503,000	156,587,000	154,790,000	161,575,000	156,370,000	149,688,000	151,895,000	144,587,000

Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					92,529,000	99,198,000	104,161,000	105,046,000	107,874,000	102,941,000	100,091,000	91,842,000	84,892,000	
Stock and Debt						62,342,000	62,462,000	66,803,000	67,414,000	71,826,000	72,236,000	73,640,000	71,600,000	69,045,000	
RCNLD Adjusted[j]						98,341,000	107,259,000	127,504,000	130,395,000	141,322,000	143,898,000	149,744,000	162,030,000	168,640,000	
Formulaic Average						84,404,000	89,640,000	99,323,000	101,118,000	107,007,000	106,358,000	107,825,000	108,490,000	107,525,000	
Less "Judgment Factor"[k]						12,504,000	17,140,000	25,823,000	26,918,000	32,207,000	31,358,000	32,325,000	33,790,000	34,225,000	
ASSESSMENT	70,000,000	69,000,000	70,500,000	70,500,000	70,500,000	71,900,000*	72,500,000*	73,500,000*	74,200,000*	74,800,000*	75,000,000*	75,000,000*	74,700,000*	73,300,000	
New York Central															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					29,882,000	36,142,000	41,132,000	45,551,000	47,245,000	54,076,000	54,166,000	50,217,000	40,840,000	
Stock and Debt						39,600,000	41,108,000	43,996,000	47,197,000	50,932,000	53,607,000	51,393,000	50,600,000	48,240,000	
RCNLD Adjusted[j]						120,418,000	129,480,000	131,721,000	136,960,000	166,503,000	156,537,000	154,790,000	161,575,000	156,370,000	
Formulaic Average						64,723,000	69,910,000	72,283,000	76,569,000	88,227,000	88,073,000	86,783,000	87,464,000	81,817,000	
Less "Judgment Factor"[k]						1,723,000	7,535,000	9,658,000	14,569,000	26,002,000	25,848,000	24,258,000	26,689,000	24,452,000	
ASSESSMENT	64,500,000	64,000,000	63,000,000	63,000,000	63,000,000	63,000,000	62,325,000	62,625,000	62,000,000	62,225,000	62,225,000	62,525,000	60,750,000	57,365,000	
Pennsylvania															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					28,478,000	31,559,000	37,003,000	36,547,000	36,876,000	37,848,000	41,400,000	38,367,000	30,836,000	
Stock and Debt						40,033,000	39,545,000	40,850,000	40,753,000	41,023,000	40,850,000	42,480,000	42,254,000	40,583,000	
RCNLD Adjusted[j]						100,587,000	110,894,000	116,257,000	115,540,000	123,812,000	123,640,000	131,700,000	142,782,000	139,728,000	
Formulaic Average						56,620,000	60,970,000	65,045,000	64,600,000	67,237,000	67,446,000	72,860,000	74,468,000	70,382,000	
Less "Judgment Factor"[k]						3,370,000	7,720,000	11,545,000	11,635,000	13,937,000	14,146,000	19,110,000	21,518,000	20,382,000	
ASSESSMENT	66,860,000	65,304,000	60,231,000	58,000,000	55,000,000	53,250,000	53,250,000	53,500,000	52,965,000	53,300,000	53,300,000	53,750,000	52,950,000	50,000,000	
Gulf, Mobile & Ohio															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					57,182,000	57,790,000	61,537,000	62,494,000	64,174,000	64,499,000	62,267,000	53,003,000	45,701,000	
Stock and Debt						45,011,000	45,359,000	47,203,000	47,959,000	49,343,000	51,816,000	52,180,000	48,615,000	44,749,000	
RCNLD Adjusted[j]						62,408,000	64,596,000	105,675,000	101,140,000	106,235,000	107,350,000	116,350,000	126,115,000	117,915,000	
Formulaic Average						54,867,000	55,915,000	71,472,000	70,531,000	73,250,000	74,555,000	76,932,000	75,910,000	69,455,000	
Less "Judgment Factor"[k]						8,867,000	9,015,000	22,077,000	20,536,000	22,255,000	23,305,000	25,232,000	24,915,000	19,755,000	
ASSESSMENT	7,900,000	8,000,000 (Alton RR. acquired)	44,000,000	46,000,000	49,500,000	46,000,000*	46,900,000*	49,395,000*	49,995,000*	50,995,000*	51,250,000*	51,700,000*	50,995,000*	49,700,000	
Wabash															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					53,793,000	56,412,000	60,771,000	59,586,000	64,378,000	70,742,000	73,583,000	71,858,000	64,945,000	
Stock and Debt						31,989,000	32,341,000	36,319,000	38,518,000	42,051,000	43,755,000	44,957,000	45,721,000	46,265,000	
RCNLD Adjusted[j]						66,297,000	74,065,000	85,106,000	83,060,000	88,855,000	88,300,000	97,722,000	101,700,000	104,270,000	
Formulaic Average						50,693,000	54,273,000	60,732,000	60,388,000	65,095,000	67,599,000	72,088,000	73,093,000	71,827,000	
Less "Judgment Factor"[k]						8,943,000	12,273,000	17,732,000	16,888,000	21,095,000	22,849,000	26,088,000	27,393,000	27,377,000	
ASSESSMENT	40,911,370	41,871,000	42,892,000	42,497,215	41,953,215	41,750,000*	42,183,320*	44,419,370*	43,500,000*	44,000,000	44,750,000*	46,000,000*	45,700,000*	44,450,000*	
New York, Chicago, St. Louis (Nickel Plate)															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					40,760,000	44,819,000	46,715,000	45,256,000	45,902,000	43,704,000	43,324,000	42,870,000	41,515,000	
Stock and Debt						33,682,000	33,967,000	33,567,000	33,576,000	33,962,000	33,787,000	34,035,000	34,217,000	34,725,000	
RCNLD Adjusted[j]						33,620,000	35,593,000	38,268,000	39,763,000	43,868,000	45,113,000	49,350,000	54,400,000	51,860,000	
Formulaic Average						36,056,000	38,170,000	39,517,000	39,532,000	41,244,000	40,868,000	42,256,000	43,829,000	42,700,000	
Less "Judgment Factor"[k]						6,306,000	8,170,000	9,217,000	9,032,000	10,494,000	10,118,000	10,956,000	12,829,000	12,325,000	
ASSESSMENT	26,000,000	26,000,000	26,000,000	27,500,000	27,500,000	29,750,000*	30,000,000*	30,300,000*	30,500,000*	30,750,000*	30,750,000*	31,300,000*	31,000,000*	30,375,000*	
Chicago & Eastern Illinois															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					18,903,000	25,539,000	32,794,000	36,801,000	41,856,000	43,282,000	45,440,000	44,945,000	39,107,000	
Stock and Debt						20,491,000	22,962,000	27,614,000	30,961,000	34,353,000	37,998,000	38,322,000	38,317,000	35,628,000	
RCNLD Adjusted[j]						53,078,000	52,125,000	64,557,000	64,203,000	70,947,000	71,798,000	77,655,000	83,700,000	77,800,000	
Formulaic Average						30,824,000	33,542,000	41,655,000	43,988,000	49,052,000	51,026,000	53,805,000	55,654,000	50,845,000	
Less "Judgment Factor"[k]						4,824,000*	6,942,000	13,725,000	15,558,000	19,052,000	20,626,000	21,555,000	23,404,000	19,170,000	
ASSESSMENT	25,000,000	25,000,000	25,000,000	25,000,000	25,000,000	26,000,000	26,600,000	27,930,000*	28,340,000*	30,000,000*	30,400,000*	32,250,000*	32,200,000*	31,675,000*	
Illinois Terminal															
Capitalized Income[j]	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					21,140,000	21,194,000	18,927,000	16,818,000	15,607,000	13,881,000	18,237,000	17,749,000	12,416,000	
Stock and Debt						18,758,000	18,910,000	18,812,000	18,417,000	18,834,000	19,258,000	16,190,000	15,270,000	11,257,000	
RCNLD Adjusted[j]						29,300,000	29,240,000	30,145,000	33,368,000	29,870,000	26,442,000	27,260,000	29,990,000	29,570,000	
						23,066,000	23,115,000	22,628,000	22,863,000	21,437,000	19,860,000	20,532,000	21,003,000	17,745,000	

Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					92,529,000	99,198,000	104,161,000	105,046,000	107,874,000	102,941,000	100,091,000	91,842,000	84,892,000	79,110,000	66,275,000	58,287,000
					62,342,000	62,462,000	66,303,000	67,414,000	71,826,000	72,236,000	73,640,000	71,600,000	69,045,000	66,350,000	59,583,000	54,609,000
					98,341,000	107,259,000	127,504,000	130,895,000	141,322,000	143,198,000	149,744,000	162,030,000	168,640,000	171,595,000	180,687,000	177,509,000
					84,404,000	89,640,000	99,323,000	101,118,000	107,067,000	106,358,000	107,825,000	108,490,000	107,525,000	105,775,000	102,210,000	97,815,000
					12,504,000	17,140,000	25,823,000	26,918,000	32,207,000	31,358,000	32,325,000	33,790,000	34,325,000	34,525,000	31,460,000	32,390,000
,000	62,000,000	70,500,000	70,500,000	70,500,000	71,900,000*	72,500,000*	73,500,000*	74,200,000*	74,800,000*	75,000,000*	75,000,000*	74,700,000*	73,000,000*	71,250,000*	70,750,000	68,025,000
Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					29,882,000	36,142,000	41,132,000	45,551,000	47,245,000	54,076,000	54,166,000	50,217,000	40,840,000	38,727,000	27,833,000	17,479,000
					39,600,000	41,168,000	43,996,000	47,197,000	50,932,000	53,607,000	51,393,000	50,600,000	48,240,000	46,971,000	41,690,000	38,072,000
					120,418,000	129,480,000	131,721,000	136,960,000	166,503,000	156,537,000	154,790,000	161,575,000	156,370,000	149,922,000	151,287,000	144,597,000
					64,723,000	69,910,000	72,283,000	76,569,000	88,227,000	88,073,000	86,783,000	87,464,000	81,817,000	78,540,000	73,803,000	66,716,000
					1,723,000	7,535,000	9,658,000	14,569,000	26,002,000	25,848,000	24,258,000	26,689,000	24,452,000	23,040,000	18,353,000	13,516,000
0,000	64,000,000	63,000,000	63,000,000	63,000,000	63,000,000	62,325,000	62,625,000	62,000,000	62,225,000	62,225,000	62,525,000	60,750,000	57,365,000	55,500,000	55,250,000	54,200,000
Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					28,478,000	31,559,000	37,003,000	36,547,000	36,876,000	37,848,000	41,400,000	38,367,000	30,836,000	28,632,000	20,498,000	14,024,000
					40,033,000	39,545,000	40,850,000	40,753,000	41,023,000	40,850,000	42,483,000	42,254,000	40,583,000	38,964,000	36,713,000	35,095,000
					100,587,000	110,894,000	116,257,000	115,540,000	123,812,000	123,640,000	134,700,000	142,782,000	139,728,000	141,725,000	149,004,000	149,870,000
					56,620,000	60,970,000	65,045,000	64,600,000	67,237,000	67,446,000	72,860,000	74,468,000	70,382,000	69,774,000	68,738,000	66,230,000
					3,370,000	7,720,000	11,545,000	11,635,000	13,937,000	14,146,000	19,110,000	21,518,000	20,382,000	20,974,000	20,188,000	18,730,000
0,000	65,304,000	60,231,000	58,000,000	55,000,000	53,250,000	53,250,000	53,500,000	52,965,000	53,300,000	53,300,000	53,750,000	52,950,000	50,000,000	48,800,000	48,550,000	47,600,000
Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					57,182,000	57,790,000	61,537,000	62,494,000	64,174,000	64,499,000	62,267,000	53,003,000	45,701,000	41,650,000	34,765,000	31,397,000
					45,011,000	45,359,000	47,203,000	47,959,000	49,343,000	51,816,000	52,180,000	48,615,000	44,749,000	42,860,000	39,773,000	36,700,000
					62,408,000	64,596,000	105,675,000	101,140,000	106,235,000	107,360,000	116,350,000	126,415,000	117,915,000	119,660,000	119,801,000	115,946,000
					54,867,000	55,915,000	71,472,000	70,531,000	73,250,000	74,555,000	76,932,000	75,910,000	69,455,000	68,057,000	64,780,000	61,348,000
					8,867,000	9,015,000	22,077,000	20,536,000	22,255,000	23,305,000	25,232,000	24,915,000	19,755,000	19,307,000	16,530,000	15,598,000
00,000	8,000,000 (Alton RR. acquired)	44,000,000	46,000,000	49,500,000	46,000,000*	46,900,000*	49,395,000*	49,995,000*	50,995,000*	51,250,000*	51,700,000*	50,995,000*	49,700,000	48,750,000	48,250,000	45,750,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					53,793,000	56,412,000	60,771,000	59,586,000	64,378,000	70,742,000	73,583,000	71,858,000	64,945,000	58,355,000	45,416,000	26,647,000
					31,989,000	32,341,000	36,319,000	38,518,000	42,051,000	43,755,000	44,957,000	45,721,000	46,265,000	46,075,000	45,926,000	47,453,000
					66,297,000	74,065,000	85,106,000	83,060,000	88,855,000	88,300,000	97,722,000	101,700,000	104,270,000	103,970,000	105,123,000	102,266,000
					50,693,000	54,273,000	60,732,000	60,388,000	65,095,000	67,599,000	72,088,000	73,093,000	71,827,000	69,467,000	65,488,000	58,789,000
					8,943,000	12,279,000	17,732,000	16,888,000	21,095,000	22,849,000	26,088,000	27,393,000	27,377,000	26,267,000	23,578,000	19,289,000
11,370	41,871,000	42,892,000	42,497,215	41,953,215	41,750,000*	43,183,320*	44,419,370*	43,500,000*	44,000,000	44,750,000*	46,000,000*	45,700,000*	44,450,000*	43,200,000*	41,910,000*	39,500,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					40,760,000	44,619,000	46,715,000	45,256,000	45,902,000	43,704,000	43,324,000	42,870,000	41,515,000	41,162,000	37,607,000	35,516,000
					33,682,000	33,967,000	33,567,000	33,576,000	33,962,000	33,787,000	34,035,000	34,217,000	34,725,000	34,834,000	36,289,000	36,462,000
					33,620,000	35,593,000	38,268,000	39,763,000	43,868,000	45,113,000	49,350,000	54,400,000	51,860,000	52,998,000	52,614,000	57,089,000
					36,056,000	38,170,000	39,517,000	39,532,000	41,244,000	40,868,000	42,256,000	43,829,000	42,700,000	42,998,000	42,236,000	43,022,000
					6,306,000	8,170,000	9,217,000	9,032,000	10,494,000	10,118,000	10,956,000	12,829,000	12,325,000	12,623,000	11,986,000	12,772,000
00,000	25,000,000	26,000,000	27,500,000	27,500,000	29,750,000*	30,000,000*	30,300,000*	30,500,000*	30,750,000*	30,750,000*	31,300,000*	31,000,000*	30,375,000*	30,375,000*	30,250,000*	30,250,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					18,903,000	25,539,000	32,794,000	36,801,000	41,856,000	43,282,000	45,440,000	44,945,000	39,107,000	39,096,000	30,950,000	22,091,000
					20,491,000	22,962,000	27,614,000	30,961,000	34,353,000	37,998,000	38,322,000	38,317,000	35,628,000	37,669,000	36,962,000	34,923,000
					53,078,000	52,125,000	64,557,000	64,203,000	70,947,000	71,798,000	77,655,000	83,700,000	77,800,000	81,553,000	87,892,000	87,522,000
					30,824,000	33,542,000	41,655,000	43,988,000	49,052,000	51,026,000	53,805,000	55,654,000	50,845,000	52,773,000	51,935,000	48,179,000
					4,824,000	6,942,000	13,725,000	15,558,000	19,052,000	20,626,000	21,555,000	23,404,000	19,170,000	21,098,000	20,380,000	17,179,000
00,000	25,000,000	25,000,000	25,000,000	25,000,000	26,000,000	26,600,000	27,930,000*	28,340,000*	30,000,000*	30,400,000*	32,250,000*	32,200,000*	31,675,000*	31,675,000*	31,555,000*	31,000,000
(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					21,140,000	21,194,000	18,927,000	16,818,000	15,607,000	13,881,000	18,237,000	17,749,000	12,410,000	10,904,000	10,967,000	9,873,000
					18,758,000	18,910,000	18,812,000	18,417,000	18,834,000	19,258,000	16,100,000	15,270,000	11,257,000	9,625,000	9,738,000	8,964,000
					29,300,000	29,240,000	30,145,000	33,368,000	29,870,000	26,442,000	27,260,000	29,990,000	29,570,000	28,675,000	27,039,000	22,289,000

Formulaic Average						30,824,000	33,542,000	41,655,000	43,988,000	49,052,000	51,026,000	53,805,000	55,654,000	50,845,000
Less "Judgment Factor"[k]						4,824,000	6,942,000	13,725,000	15,558,000	19,052,000	20,626,000	21,555,000	23,454,000	19,170,000
ASSESSMENT	25,000,000	25,000,000	25,000,000	25,000,000	25,000,000	26,000,000	26,600,000	27,930,000*	28,340,000*	30,000,000*	30,400,000*	32,250,000*	32,200,000*	31,675,000*
Illinois Terminal														
Capitalized Income[i]						21,140,000	21,194,000	18,927,000	16,818,000	15,607,000	12,881,000	18,237,000	17,749,000	12,418,000
Stock and Debt	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					18,758,000	18,910,000	18,812,000	18,417,000	18,834,000	19,258,000	16,100,000	15,270,000	11,287,000
RCNLD Adjusted[j]						29,300,000	29,240,000	30,145,000	33,368,000	29,870,000	26,442,000	27,260,000	29,990,000	29,570,000
Formulaic Average						23,066,000	23,115,000	22,628,000	22,863,000	21,437,000	19,860,000	20,532,000	21,003,000	17,745,000
Less "Judgment Factor"[k]						2,266,000	2,515,000	2,728,000	3,668,000	2,937,000	2,360,000	3,032,000	4,003,000	4,245,000
ASSESSMENT	21,300,000	21,300,000	21,250,000	21,250,000	21,000,000	20,800,000	20,600,000	19,900,000	19,200,000	18,500,000	17,500,000	17,500,000	17,000,000	13,500,000
Terminal Railroad Association of St. Louis[a]														
Capitalized Income[i]						18,285,000	18,613,000	20,238,000	19,836,000	19,532,000	19,902,000	19,750,000	19,435,000	18,744,000
Stock and Debt	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					23,718,000	23,709,000	24,700,000	24,178,000	23,519,000	22,929,000	17,435,000	16,720,000	17,001,000
RCNLD Adjusted[j]						20,725,000	23,132,000	26,494,000	26,323,000	29,537,000	30,035,000	31,845,000	34,784,000	35,093,000
Formulaic Average						20,910,000	21,818,000	23,810,000	23,445,000	24,196,000	24,290,000	23,010,000	23,646,000	23,613,000
Less "Judgment Factor"[k]						910,000	2,068,000	4,110,000	3,745,000	4,496,000	4,590,000	3,360,000	4,396,000	5,838,000
ASSESSMENT	20,823,000	20,500,000	20,400,000	20,200,000	20,000,000	20,000,000*	19,750,000*	19,700,000*	19,700,000*	19,700,000*	19,700,000*	19,650,000*	19,250,000	17,775,000*
Alton & Southern														
Capitalized Income[i]						12,472,000	12,770,000	12,972,000	13,618,000	14,310,000	15,189,000	15,798,000	15,782,000	14,767,000
Stock and Debt	(Data for Years Prior to 1951 Could Not Be Located by Director in 1963)					10,204,000	10,448,000	.....	8,447,000	8,645,000	9,075,000	13,947,000	13,577,000	13,393,000
RCNLD Adjusted[j]						6,175,000	6,507,000	6,797,000	6,670,000	7,219,000	7,193,000	7,575,000	8,190,000	8,670,000
Formulaic Average						9,617,000	9,908,000	9,885,000	9,578,000	10,058,000	10,485,000	12,440,000	12,516,000	12,276,000
Less "Judgment Factor"[k]						367,000	458,000	485,000	378,000	858,000	1,285,000	3,140,000	3,216,000	3,126,000
ASSESSMENT	6,500,000	6,000,000	6,900,000	8,300,000	8,800,000	9,250,000*	9,450,000*	9,400,000*	9,200,000*	9,200,000*	9,200,000*	9,300,000*	9,300,000*	9,150,000*

NOTES

* On Jan. 1, 1946 Illinois' centralized Full Value Equalization Program went into effect. The railroads' assessments were distributed by the Director to the counties at value and the explicit equalization of railroad assessments down to the statewide level of assessments of locally assessed real estate affected by the Directors in prior years ended. See generally economist Lynn A. Stiles' "'Full Fair Cash Value' in the 1945 Illinois Assessment Equalization Program," 32 Bulletin of National Tax Association 34 (1946); Note, "Equalization of Railroad Assessments in Illinois," 35 Ill. Law Rev. 766 (1941). Also in 1946 inflation started, to continue unto this day. The price level began to shoot upwards and the inflating prices were reflected in the Director's staff's sales ratio studies of locally assessed property which were based on current sales prices related to corresponding assessments, and used in the formulation by the Director of equalization multipliers for the counties. The inflating prices were also reflected in the reproduction cost of railroad property as recorded by ICC's Bureau of Valuation and transmitted to the Director's Staff for use in the administrative formula for valuing railroad operating property. The ICC's staff's "Elements of Value" are in the Record as Peo. Ex. 72. The formula averaged three elements of value.

[b] In 1948 it was estimated by Director or his staff or both that the 1946 state-wide level of assessment of locally assessed real estate after application of the Director's multipliers was "around 75%" based on 1945 selling prices captured in the sales ratio studies. Lynn A. Stiles, the Director's "Railroad Assessor" as well as expert on locally assessed property, suggested an explicit 25% reduction of railroad assessments "so that they would stand in the same relationship to today's prices as do equalized assessments on real estate."

[c] Lynn A. Stiles, the Director's "Railroad Assessor," sent a January 28, 1949 memorandum on present railroad valuation and assessment procedures to an incoming Director. The memorandum described the valuation formula developed and refined after 1933 by economists Simeon Leland, George W. Mitchell and Stiles and does not mention the use of a "judgment factor" reduction and indicates that except in special situations the formulaic average essentially constitutes value. Peo. Ex. 112. Stiles confirmed the 1948 staff suggestion to reduce railroad assessments by 25% and reported "it suffices that no explicit adjustment was made in an effort to align railroad values with others." (emphasis not added.) Later in 1949 Stiles resigned from the Department of Revenue but before his departure he delivered "Railroad Assessment and Allocations," a paper in which he stated that and explained why the three elements of value used in the Illinois formula should be given equal weight. 1949 Proceedings of National Tax Association 418. The Director replaced Stiles as "railroad assessor" by a land appraiser, Raymond S. Danis, a long time staff member of the Property Tax Division of the Department and the predecessor Tax Commission who was made directly accountable to the Director and removed from the supervision of E. L. Maynard, Supervisor of the Chicago office of the Property Tax Division.

[d] In 1950 the state-wide equalized level of real estate assessment had receded to approximately 62% according to Railroad Witness Weil, an economist and former member of the Director's staff. See Weil, "Property Tax Equalization in Illinois," National Tax Journal 157 (June, 1953) (Peo. Ex. 57), who stated that the Director had been discounting inflated prices by "judgment reductions" in formulating equalization multipliers for the counties. In 1951 the level of assessment was about 70% according to Report No. 7 of the Illinois School Problems Commission 64 (1963).

[e] In 1959 the legislature froze the multipliers certified by the Director to the counties so that the certifications need be effected generally only once every four years instead of annually. State-wide level of assessment of locally assessed property has slipped to about 50% based upon sales data of real estate. Director reduced railroad assessments.

[f] In 1959 Raymond S. Danis retired. Railroad assessments were again decreased. Danis was r sentative of the Chicago & Eastern Illinois Railroad. In 1961 Koncel delivered a speech in Montre given equal weight except in extraordinary situations. Rr. Ex. 106.

[g] Assessments admittedly arbitrarily formulated on predetermined industry basis by Assistant D tors" adjusted to reach individual assessments. Railroad assessments were reduced. In July 1963 railroad assessments and later in 1963 the Director eliminated the "judgment factor" reductions and averages, producing an industry valuation of $1,377,000,000, and then applied an explicit equalizati died.

[h] The CB&Q and the eleven other Appellees have accounted for about 60% of the total railro

[i] The Department used as the income base for all railroads "Net Railway Operating Income," an needed accounting adjustments. Inherent defects in this element as a reflector of value include p rial prerogative. Five year average used. 6% capitalization rate. Also, five year average of stock in this element as a reflection of value. System figures derived and allocated into Illinois.

[j] System reproduction cost new as determined by the Bureau of Valuation of ICC and allocated on period prices. RCN was sometimes reduced by Director's staff by applying a condition percen a lower RCN less depreciation and obsolescence than found by ICC staff. After 1952, Illinois allo "uneconomic property" in Illinois. After 1957, further sometimes reduced by Directors' staff by ar penditure" RCN. (more than 60% of RCN). The limited size of the staff is described in the Record.

[k] There is no data or rational evidence in the Record or elsewhere to support this item. The formulaic averages are on Peo. Ex. 31. "Judgment factors" were employed for practically all Ill

[l] Minute analysis of this company is contained in Appendix F to People's Second Brief II Ill. S

[m] Held by the Supreme Court of Illinois not to exceed value. C&NW v. Department of Revenue contained precise mathematical proof that the "judgment factor" reduction was enlarged in a pr sessment and reduce the prior year's assessment by $1,000,000 even though the formulaic average factor" was not in issue. The Court questioned it and confirmed that the Record did not inclu

[n] Madison County's largest railroad taxpayer owned by 15 railroads including seven of the Ap

* Assessment less than average of capitalized income and securities elements of value. In the (CB&Q's common stock was mostly owned by Northern Pacific and Great Northern).

(This data permits precise proof that the "judgment factor" was a technique by which the influence of inflation in formulaic averages was suppressed and prior year's assessments were generally either held steady or decreased to implement a policy of to stabilize or decrease discrimination. The key working tools are the Rules of 1 for 3 and 3 for 1: an increase of 3 in an element of value equals an increase of 1 in the average. A reduction of the average by 1 via the "judgment factor" equals a redu

for Years Prior to 1951 Could Not Be Located by Director in 1963)				20,491,000	22,962,000	27,614,000			71,798,000	77,655,000	83,700,000			
				53,078,000	52,125,000	64,557,000	64,203,000	70,947,000				50,845,000	52,773,000	51,935,000	48,179,000
				30,824,000	33,542,000	41,655,000	43,988,000	49,052,000	51,926,000	53,805,000	55,654,000	19,170,000	21,098,000	20,380,000	17,179,000
				4,824,000	6,942,000	13,725,000	15,558,000	19,052,000	20,626,000	21,555,000	23,404,000				
0	25,000,000	25,000,000	25,000,000	25,000,000	26,000,000	26,600,000	27,930,000*	28,349,000*	30,000,000*	30,400,000*	32,250,000*	32,200,000*	31,675,000*	31,675,000*	31,555,000*	31,000,000
a for Years Prior to 1951 Could Not Be Located by Director in 1963)				21,146,000	21,194,000	18,927,000	16,818,000	15,607,000	13,881,000	18,237,000	17,749,000	12,410,000	10,904,000	10,967,000	9,873,000
				18,758,000	18,910,000	18,812,000	18,417,000	18,834,000	19,258,000	16,100,000	15,270,000	11,257,000	9,625,000	9,738,000	8,964,000
				29,300,000	29,240,000	30,145,000	33,368,000	29,870,000	26,442,000	27,260,000	29,990,000	29,570,000	28,675,000	27,059,000	22,289,000
				23,066,000	23,115,000	22,628,000	22,863,000	21,437,000	19,860,000	20,532,000	21,003,000	17,745,000	16,400,000	15,915,000	13,702,000
				2,266,000	2,515,000	2,728,000	3,668,000	2,937,000	2,360,000	3,032,000	4,003,000	4,245,000	4,150,000	3,665,000	2,009,000
0	21,300,000	21,250,000	21,250,000	21,000,000	20,800,000	20,600,000	19,900,000	19,200,000	18,500,000	17,500,000	17,500,000	17,000,000	13,000,000	12,250,000	12,200,000	11,700,000
a for Years Prior to 1951 Could Not Be Located by Director in 1963)				18,285,000	18,613,000	20,238,000	19,836,000	19,532,000	19,902,000	19,750,000	19,435,000	18,744,000	18,520,000	16,450,000	15,130,000
				23,718,000	23,709,000	24,700,000	24,178,000	23,519,000	22,929,000	17,435,000	16,720,000	17,001,000	16,360,000	14,605,000	13,738,000
				20,725,000	23,132,000	26,494,000	26,323,000	29,537,000	30,035,000	31,845,000	34,784,000	35,093,000	33,460,000	31,998,000	31,528,000
				20,910,000	21,818,000	23,810,000	23,445,000	24,196,000	24,296,000	23,010,000	23,646,000	23,613,000	22,780,000	21,018,000	20,132,000
				910,000	2,068,000	4,110,000	3,745,000	4,496,000	4,590,000	3,360,000	4,396,000	5,838,000	5,695,000	4,018,000	3,632,000
0	20,500,000	20,400,000	20,200,000	20,000,000	20,000,000*	19,750,000*	19,700,000*	19,700,000*	19,700,000*	19,700,000*	19,650,000*	19,250,000	17,775,000*	17,085,000*	17,000,000	16,500,000
a for Years Prior to 1951 Could Not Be Located by Director in 1963)				12,478,000	12,770,000	12,972,000	13,618,000	14,310,000	15,189,000	15,798,000	15,782,000	14,767,000	14,655,000	13,380,000	13,078,000
				10,204,000	10,448,000		8,447,000	8,645,000	9,075,000	13,947,000	13,577,000	13,393,000	12,935,000	11,880,000	11,864,000
				6,175,000	6,507,000	6,797,000	6,670,000	7,219,000	7,198,000	7,575,000	8,180,000	8,670,000	9,027,000	9,442,000	9,592,000
				9,617,000	9,908,000	9,885,000	9,578,000	10,058,000	10,485,000	12,440,000	12,516,000	12,276,000	12,206,000	11,567,000	11,511,000
				367,000	458,900	485,000	378,000	858,000	1,285,000	3,140,000	3,216,000	3,126,000	3,206,000	2,605,000	2,611,000
00	6,000,000	6,900,000	8,300,000	8,800,000	9,250,000*	9,450,000*	9,400,000*	9,200,000*	9,200,000*	9,200,000*	9,300,000*	9,300,000*	9,150,000*	9,000,000*	8,962,000*	8,900,000*

ue Equalization Program went into effect. The railroads' assessments were distributed by the Dualization of railroad assessments down to the statewide level of assessments of locally assessed ears ended. See generally economist Lynn A. Stiles' "'Full Fair Cash Value' in the 1945 Illinois of National Tax Association 34 (1946); Note, "Equalization of Railroad Assessments in Illinois." n started, to continue unto this day. The price level began to shoot upwards and the inflating ales ratio studies of locally assessed property which were based on current sales prices related to mulation by the Director of equalization multipliers for the counties. The inflating prices were also operty as recorded by ICC's Bureau of Valuation and transmitted to the Director's Staff for use in operating property. The ICC's staff's "Elements of Value" are in the Record as Peo. Ex. 72.

staff or both that the 1946 state-wide level of assessment of locally assessed real estate after appli- 75%" based on 1945 selling prices captured in the sales ratio studies. Lynn A. Stiles, the Direc- locally assessed property, suggested an explicit 25% reduction of railroad assessments "so that day's prices as do equalized assessments on real estate."

essor," sent a January 28, 1949 memorandum on present railroad valuation and assessment procedures escribed the valuation formula developed and refined after 1933 by economists Simeon Leland, ation the use of a "judgment factor" reduction and indicates that except in special situations the for- Peo. Ex. 112. Stiles confirmed the 1948 staff suggestion to reduce railroad assessments by 25% and was made in an effort to align railroad values with others." (emphasis not added.) Later in 1949 e but before his departure he delivered "Railroad Assessment and Allocations," a paper in which he ts of value used in the Illinois formula should be given equal weight. 1949 Proceedings of National iles as "railroad assessor" by a land appraiser, Raymond S. Danis, a long time staff member of the he predecessor Tax Commission who was made directly accountable to the Director and removed isor of the Chicago office of the Property Tax Division.

al estate assessment had receded to approximately 62% according to Railroad Witness Weil, an s staff. See Weil, "Property Tax Equalization in Illinois," National Tax Journal 157 (June, 1953) l been discounting inflated prices by "judgment reductions" in formulating equalization multipliers ent was about 70% according to Report No. 7 of the Illinois School Problems Commission 64 (1963).

s certified by the Director to the counties so that the certifications need be effected generally only te-wide level of assessment of locally assessed property has slipped to about 50% based upon sales assessments.

NOTES

f In 1959 Raymond S. Danis retired. Railroad assessments were again decreased. Danis was replaced by Edward Koncel, retired tax representative of the Chicago & Eastern Illinois Railroad. In 1961 Koncel delivered a speech in Montreal saying the three elements of value should be given equal weight except in extraordinary situations. Rr. Ex. 106.

g Assessments admittedly arbitrarily formulated on predetermined industry basis by Assistant Director to "hold the line" with "judgment factors" adjusted to reach individual assessments. Railroad assessments were reduced. In July 1963 the legislature required explicit equalization of railroad assessments and later in 1963 the Director eliminated the "judgment factor" reductions and valued railroad property according to formulaic averages, producing an industry valuation of $1,377,000,000, and then applied an explicit equalization factor to reach assessments. Raymond Danis died.

h The CB&Q and the eleven other Appellees have accounted for about 60% of the total railroad state assessment in Illinois since about 1946.

i The Department used as the income base for all railroads "Net Railway Operating Income," an ICC accounting concept (after taxes), without needed accounting adjustments. Inherent defects in this element as a reflector of value include peculiarities of railroad accounting and managerial prerogative. Five year average used. 6% capitalization rate. Also, five year average of stock and debt values used. There are also defects in this element as a reflection of value. System figures derived and allocated into Illinois.

j System reproduction cost new as determined by the Bureau of Valuation of ICC and allocated into Illinois by Director's staff. ICC RCN based on period prices. RCN was sometimes reduced by Director's staff by applying a condition percentage lower than the ICC staff found, producing a lower RCN less depreciation and obsolescence than found by ICC staff. After 1952, Illinois allocation further reduced by Director's staff for "uneconomic property" in Illinois. After 1957, further sometimes reduced by Directors' staff by arbitrary 10% of adjusted "Road and General Expenditure" RCN. (more than 60% of RCN). The limited size of the staff is described in the Record.

k There is no data or rational evidence in the Record or elsewhere to support this item. The percentage relationship of the reductions to formulaic averages are on Peo. Ex. 31. "Judgment factors" were employed for practically all Illinois railroads.

l Minute analysis of this company is contained in Appendix F to People's Second Brief II Ill. Sup. Ct. Rec. 88.

m Held by the Supreme Court of Illinois not to exceed value. **C&NW v. Department of Revenue, 6 Ill. 2d 278 (1955).** The record in that case contained precise mathematical proof that the "judgment factor" reduction was enlarged in a precise amount to carry over the prior year's assessment and reduce the prior year's assessment by $1,000,000 even though the formulaic average increased $5,086,000. However, the "judgment factor" was not in issue. The Court questioned it and confirmed that the Record did not include an explanation.

n Madison County's largest railroad taxpayer owned by 15 railroads including seven of the Appellees.

* Assessment less than average of capitalized income and securities elements of value. In the case of the CB&Q, less than capitalized income. (CB&Q's common stock was mostly owned by Northern Pacific and Great Northern).

the "judgment factor" was a technique by which the influence of inflation in formulaic averages was suppressed and prior year's assessments were generally either held steady or decreased to implement a policy of holding the line or reduce assessments . The key working tools are the Rules of 1 for 3 and 3 for 1: an increase of 3 in an element of value equals an increase of 1 in the average. A reduction of the average by 1 via the "judgment factor" equals a reduction of 3 from an element of value.)

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Roberts & Schaefer & Co. v. Emmerson, 271 U. S. 50, 54, 70 L. ed. 827, 833, 46 S. Ct. 375 (1926) 14
South Carolina v. Katzenbach, 383 U. S. 301, 323, 15 L. ed. 2d 769, 784, 86 S. Ct. 803 (1966) 14
Tileston v. Ullman, 318 U. S. 44, 46, 87 L. ed. 608, 604, 63 S. Ct. 493 (1943) 14
Trenton v. New Jersey, 262 U. S. 182, 192, 67 L. ed. 937, 943, 43 S. Ct. 534 (1923) 14
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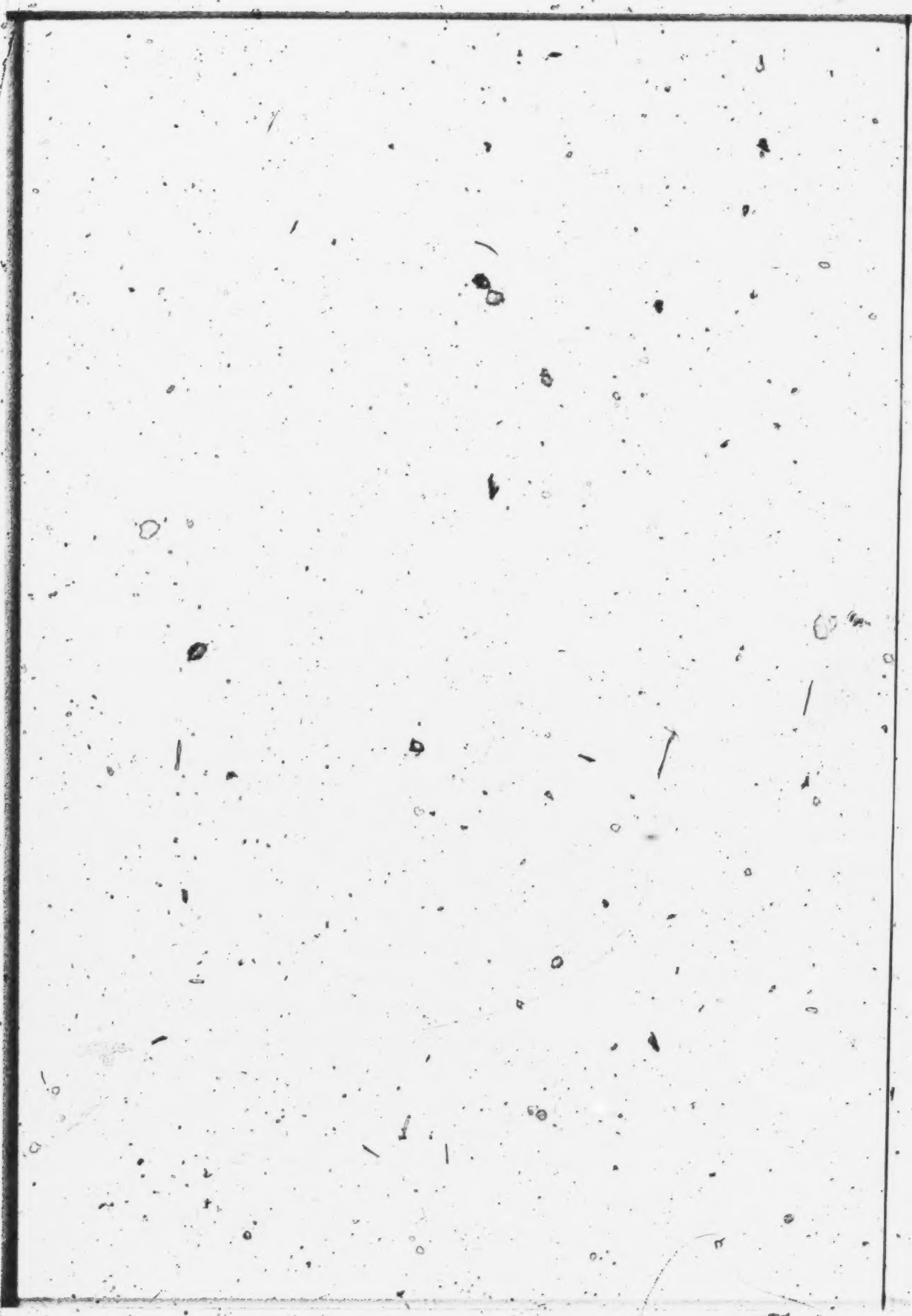

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 610.

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MAERAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTHWESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois.

MOTION TO DISMISS OR AFFIRM.

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss these appeals or to affirm the judgment of the Illinois Supreme Court, for the following reasons:

I.

A. The limited records on appeal present no grounds for jurisdiction to review.

B. The appeal to this Court is not timely.

II.

Even if this Court considers more than the limited record reviewed by the Illinois Supreme Court, there are cogent reasons why there is no jurisdiction to review this case by appeal or certiorari.

A. The former decision of this court passed upon the jurisdictional questions here presented.

B. The equal protection and due process clauses of the Fourteenth Amendment do not protect the State or any of its arms.

C. The alleged violations of the Fourteenth Amendment create no discrimination against appellant.

D. The appellant's right of review on direct appeal is foreclosed by failure to make a timely presentation of the constitutional grounds before the Supreme Court of Illinois.

E. No question presented for consideration upon appeal.

F. No substantial federal question is involved. The people raise only an evidentiary question.

STATEMENT OF THE CASE.

These are direct appeals from judgments of the Supreme Court of the State of Illinois entered on January 19, 1967, dismissing appeals taken by the appellant from final judgments entered by the Circuit Court, Third Judicial Circuit of Illinois, Madison County, on April 20, 1966. The latter judgments were entered pursuant to mandates of the Supreme Court of Illinois issued on September 30, 1965, which had reversed and remanded judgments previously rendered by said Circuit Court.

This litigation was initiated by objections filed by the appellees to the real estate taxes extended against the assessed valuation of their railroad operating property located in Madison County, Illinois, during the period 1957 to 1962, inclusive, pursuant to the remedy recognized by the Illinois Supreme Court in the **Callahan** case and subsequently confirmed in the **C. B. & Q. Railroad Co. Valuation** case.[1] The objections were filed in response to the annual application of the People of the State of Illinois ex rel., the incumbent county treasurer and ex officio county collector of Madison County seeking a judgment for delinquent taxes. The objections of the railroads which are in dispute in the instant cases were based upon a failure of the Department of Revenue to assess and equalize all taxable property in Madison County at its full fair cash value as required by the Illinois Revenue Act of 1939 as amended, alleging that the operating property of the railroads was annually assessed at its full fair cash value whereas the value of locally assessed property, representing approximately 95% of taxable property in the county, was debased to levels averaging 50% of full value during the years 1957 to 1962. The railroads sought

[1] People ex rel. Callahan v. GM&O RR. Co., 8 Ill. 2d 66, 132 N. E. 2d 544 and CB&Q RR. Co. v. Dept. of Revenue, 17 Ill. 2d 376, 161 N. E. 2d 838.

refunds of protested taxes to the extent that the taxes paid exceeded the amount which they would have been required to pay if all property had been assessed and equalized to the level of 100% of full fair cash value as required by statute.

The pending objections of all of the railroads were consolidated for trial and by stipulation entered into by all of the parties, it was agreed that:

> "The said Objectors have each objected to taxes levied upon its railroad property in Madison Couny, Illinois, for the several years for which their objections are pending and have been consolidated for trial in this proceeding, because of **the alleged unlawful discrimination resulting from the alleged debasement of equalized assessed valuations of locally assessed property in Madison County for each of said years and the alleged equalized assessed valuation of such railroad properties at full fair cash values, and that this consolidated case is to be tried upon said objections**, without said causes being merged and with the maintenance of separate dockets and with separate final orders in all cases at the conclusion of the trial proceedings."

After a lengthy trial and consideration of voluminous testimony and exhibits, the trial court found that locally assessed property had been debased to levels varying from 48.14% to 51.4% during the years in question and that the railroads had likewise been assessed at less than full value but at levels so much higher than local property that it constituted constructive fraud entitling the railroads to a refund of only a portion of the taxes paid under protest. The judgment order of the trial court expressly reserved jurisdiction of the court to approve the refund computations and implement the process of refund and distribution of the monies in the tax protest

fund. The court added "there is no reason for delaying the enforcement or appeal of this order, judgment and decree."

The railroads perfected a direct appeal to the Illinois Supreme Court only with respect to the trial court's determination that their operating properties had been assessed at less than full value. **No cross appeal was taken on behalf of the collector** and therefore the findings of the trial court regarding the debasement of locally assessed property are now undisputed. The Illinois Supreme Court concluded that the trial court proof established "assessments of the railroads at substantial full value and that the objectors are entitled to the refunds prayed for rather than refunds fixed by the trial court, which in each case was to be computed upon the straight average formulaic result without application of the judgment factor." In its judgments which became final on September 27, 1965 on denial of rehearing, the Supreme Court reversed the judgments of the trial court and remanded the cases to said court, directing a refund of taxes to the railroads computed in conformity with earlier decisions of the Supreme Court of Illinois as outlined in the Hillison and Kohorst cases[2] instead of the straight formulaic average used by the trial court in computing refunds. The opinion appears at Appendix D, page A-11 of the Appellant's Jurisdictional Statement.

From those judgments of the Supreme Court of Illinois, the appellant appealed to this Court, asking that the appeals also be treated as a petition for a writ of certiorari, which case was docketed at the October term, 1965, as No. 1046. The appellant filed a Jurisdictional Statement and the appellees there, who are the appellees here,

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[2] See People ex rel. Hillison v. CB&Q RR. Co., 22 Ill. 2d 88, 174 N. E. 2d 175, and People ex rel. Kohorst v. GM&O RR. Co., 22 Ill. 2d 104, 174 N. E. 2d 182.

filed their joint motion to dismiss the appeals, or in the alternative, to affirm the Supreme Court of Illinois assigning three points for the dismissal: (1) that appeal was inappropriate since the constitutionality of no state statute was involved; (2) that there was no substantial federal question involved; and (3) that the judgments of the Supreme Court of Illinois lacked finality as a basis for jurisdiction of this Court.

On May 16, 1966, this Court dismissed the appeal for want of jurisdiction and treating the papers as a petition for a writ of certiorari, denied certiorari (284 U. S. 213, 16 L. ed. 2d 480, 86 S. Ct. 1456). The appellant then filed its petition for rehearing and, in the alternative, asked this Court to clarify its dismissal by stating whether it was based upon the lack of a federal question, or because of the lack of finality in the judgments. In its petition for rehearing, the appellant said, "If the basis of the May 16, 1966, decision is the absence of a federal question, there is no reason to incur the effort, expense and delay in pursuing the pending appeals below". The application for rehearing was denied by this Court on June 13, 1966, without the clarification requested by appellant (384 U. S. 994, 16 L. ed. 2d 1011, 86 S. Ct. 1885).

Notices of appeal to this Court as above recited had been filed on December 23, 1965. Prior thereto the appellees redocketed these cases in the trial court on November 2, 1965, moved the trial court to enter judgments thereon pursuant to the mandates of the Supreme Court of Illinois, and submitted to the Court under date of November 30, 1965, written orders to carry out such mandates. On April 20, 1966, while the appeals were still pending in this Court, the appellant here withdrew opposition to the method used by appellees in computing refunds and to the entry of such orders (R. 80, pp. 3-4). Based upon such withdrawal of objections, the trial court

entered such orders,[3] the form of which appears in Appendix C, page A6 of the Appellant's Jurisdictional Statement.

The withdrawal by the appellant of its objections to the method of computing refunds was evidently prompted by its desire to avoid the point made by the appellees in the first appeal to this Court that the Illinois Supreme Court judgments were not final, since the appellant promptly had certified copies of said orders filed in this Court and presented to this Court in its Brief in Opposition to Appellees' Motion to Dismiss filed April 25, 1966, the argument beginning at page 79 of said brief that the judgments acquired finality by the entry of the orders by the trial court on April 20, 1966.

On the day after judgments were entered in the trial court on April 20, 1966, the appellant here filed notices of appeal to the Supreme Court of Illinois, and thereafter on September 15, 1966, appellant filed a motion to consolidate the Illinois Supreme Court records in the prior cases docketed as Nos. 38,859-38,904 with the record in the present case. This motion was denied by order entered on September 22, 1966.

Appellees joined in a motion to dismiss the appeals on the ground that the trial court had done nothing more than carry out the mandate of the Supreme Court of Illinois after the appellant had withdrawn all objections

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[3] Docket entry dated April 20, 1966 is as follows:

"Pursuant to the mandate of the Supreme Court of Illinois, and in forms of orders heretofore submitted and requested by the railroad tax objectors, opposition of the People tax applicants heretofore asserted to such forms being now withdrawn as per statement of the People this day filed, the 46 judgment orders heretofore submitted by the railroads are this day signed and entered, to implement the mandates of the Supreme Court of Illinois following judgments reversing and remanding the previous final judgment orders of this court entered August 20, 1964."

to the method of computing refunds and there was nothing further for the Supreme Court of Illinois to review. This motion was taken with the case and on January 19, 1967, the Supreme Court of Illinois dismissed said appeals by its order which appears in Appendix B, page A5 of the Appellant's Jurisdictional Statement and filed its written opinion on said date wherein the Court stated: "The mandate was admittedly followed so there is nothing left to review. This is a deliberate attempt to relitigate the same issues presented on the prior appeal." This opinion appears in Appendix A, page A1 of the Appellant's Jurisdictional Statement. Subsequently rehearing was denied March 27, 1967.

From this judgment of the Supreme Court of Illinois, dismissing its appeal, the appellant now has filed the pending notice of appeal to this Court. The change in name of the relator appellant from George Musso to John Maeras was occasioned by the fact that Maeras was elected as County Treasurer to succeed Musso and has been substituted as a party in this case.

STATUTES INVOLVED.

On the limited record now before this Court for review, there are no statutes involved. However, if the records on the prior appeals, which have not been certified by the Clerk of the Illinois Supreme Court as a part of the record in the instant case, are to be considered, then the following are involved:

The Constitution of the State of Illinois, 1870, Article IX, Section 1, states in part (Ill. Rev. Stat., 1965, p. 21):

> "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or per-

sons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; * * *" (Emphasis added).

The Illinois General Assembly has enacted provisions in the Revenue Act of 1939, as amended,[4] to implement the foregoing requirements by delegating to the Department of Revenue the authority and responsibility for assessing railroad operating property and certain other types of property, and for equalizing the assessments of all other real estate and personal property assessed by various local officials. The uniformity provisions of Article IX, Section 1, have been carried out in various sections of the Revenue Act which specifically require that all real estate and personal property, both locally assessed and state assessed, be valued for tax purposes at fair cash value. If local assessing officials fail to assess at full fair cash value, the Department of Revenue is empowered to certify to the county clerk an appropriate multiplier to raise the level of assessment of locally assessed property to 100% of full value.[5]

The method of determining the fair cash value of railroad operating property, except non-carrier real estate, is prescribed in Section 80 of the Revenue Act (Ill. Rev. Stat. 1961, c. 120, par. 561). The Department is required to consider the actual or market value of stock and debt and the net earnings of the company over the preceding five years, "and such other information as the Department may consider as bearing on the fair cash value of the property" (which has included reproduction cost of property having a situs in Illinois together with other matters affecting their judgment of value).

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[4] Pertinent paragraphs of the statute are included in Appendix B.

[5] Ill. Rev. Stat. 1961, c. 120, pars. 501, 502, 561, 612, 627 and 632.

ARGUMENT.

I.

A. The Limited Records on Appeal Present No Grounds for Jurisdiction to Review.

The 1967 decision of the Illinois Supreme Court which appellant seeks to have this Court review was concerned only with dismissal of appeals from judgments entered on April 20, 1966, by the Circuit Court of Madison County, Illinois. Those judgments merely carried out the mandates of the Illinois Supreme Court which followed the first appeals to that court and appellant conceded that those judgments did conform to the mandates. The opinion of the Illinois Supreme Court points out:

> "It has long been recognized that once a case has been decided by this court, the only question which may be considered upon a subsequent appeal involving the same issue is whether the trial court followed our mandate (citing cases). The mandate was admittedly followed so there is nothing left to review. This is a deliberate attempt to relitigate the same issues presented on the prior appeal."

Since there is no disputed issue, the limited record which is now before this Court presents no grounds for jurisdiction of this Court to review the 1967 Illinois Supreme Court decision either by appeal or writ of certiorari as provided in 28 U. S. C., § 1257.

B. Appeal to This Court Is Not Timely.

This appeal does not bring to this Court the judgments rendered by the Supreme Court of Illinois following the first appeals in 1965. The Court had remanded the cases

to the trial court for computation of the refunds due the railroads and entry of final judgments. Such judgments were finally rendered by the trial court on April 20, 1966, after appellant here withdrew objections to the method of computing refunds. Those judgments effectively terminated the litigation in the Illinois courts, and became the final judgments by the highest court of the state in which a decision could be had within the meaning of Section 1257 of the Judicial Code. (28 USC, Sec. 1257). If any basis existed for a review by this Court, either by appeal or certiorari, it was from that decision of the trial court which was a continuation of the prior litigation. On the prior appeal to this Court, appellant argued that this action of the trial court cured the lack of finality with respect to the judgments appealed, and we agree. However, appellant now adopts the theory that appellant's prior appeal to this Court at the October term 1965, was dismissed and certiorari denied because of lack of finality of those prior judgments. If that is true, then the time in which appellant might perfect an appeal or file a petition for writ of certiorari in this Court began to run on April 20, 1966, and expired long before service of the notices of the present appeals. **Central New England Railway Company v. Boston & Albany Railway Co.**, 279 U. S. 415, 73 L. ed. 770, 774, 49 S. Ct. 358 (1929).

The admitted purpose of the appeals to the Supreme Court of Illinois was to provide a vehicle to convey the cases back to this Court a second time. However, appellant's motion to consolidate the records of the first appeals as a part of the record on this second appeal was denied by the Illinois Supreme Court. Although the original records of these cases from the trial court through the first appeals to the Illinois Supreme Court have been filed by appellant with the Clerk of this Court, those records are not a part of the official records of the cases now before this Court on appeal.

Cases relied upon by appellant in its Jurisdictional Statement (pp. 7 and 8) to sustain jurisdiction to review questions decided on the first appeal are not in point. Since all of those cases involved remands to the trial court for re-trial, the State Supreme Court's first judgment lacked finality for purposes of review and the subsequent trial court's judgment after re-trial, being again reviewable by the Supreme Court of the state, was not a judgment of the highest court of that state. Thus the continuity of the litigation in the cases cited extended throughout their entire span and such cases would first become reviewable by this Court after the second judgment of the State Supreme Court. In contradistinction, the instant case resulted in a final judgment in the trial court on April 20, 1966, when the orders were entered on the mandate.

II.

Even if this Court considers more than the limited record reviewed by the Illinois Supreme Court, there are cogent reasons why there is no jurisdiction to review this case by appeal or certiorari.

A. Former Decision of This Court Passed Upon the Jurisdictional Questions Here Presented.

Appellees are of the opinion that there are reasonable grounds to assume that the 1965 appeals to this Court (Docket No. 1046) were dismissed on the lack of merit of the jurisdictional grounds asserted rather than want of finality. The only court action which has occurred since is the dismissal by the Illinois Supreme Court of appellant's ill advised appeals from the judgments entered on the mandate. Thus the grounds for jurisdiction considered by this Court on the former appeal raised the identical jurisdictional questions presented in appellant's latest Jurisdictional Statement, although cast in

somewhat different language. Consequently this is an improper attempt by appellant to have this Court again review the jurisdictional issues already decided. This appeal should be dismissed and certiorari denied without further consideration of these questions.

B. The Equal Protection and Due Process Clauses of the Fourteenth Amendment Do Not Protect the State or Any of Its Arms.

The appellant here is "People of the State of Illinois, Ex Rel. John Maeras, Treasurer and Ex Officio Collector of Taxes of Madison County, Illinois," as is required by Illinois law. Under the law of Illinois, the County Treasurer as such Ex Officio Collector is charged with the responsibility of annually collecting property taxes. The State is deemed to be a real party in interest, adversary to the taxpayer, in a proceeding such as this. People Ex Rel. Murray v. City of St. Louis, 297 Ill. 199, 202.

In the instant case, the appellant, whether that word be deemed to be the State or the County Collector, asserts as against the railroad taxpayers, who are appellees, that the action of the Department of Revenue in using a judgment factor in arriving at the full value of the respective railroad properties, and the action of the Supreme Court of Illinois in approving the use of a judgment factor by said Department, has deprived the State of Illinois or the County Collector, or both, of due process of law and equal protection of law under the Fourteenth Amendment.

We thus have one arm or branch of the State asserting that another arm or branch of the State, namely the Department of Revenue and the Supreme Court of Illinois, by their actions violate said Amendment. The Fourteenth Amendment by its terms protects persons within the jurisdiction of the State from state action which violates due process and equal protection of the

law. Neither the State, nor the Collector of Taxes is a person within the protection of the Fourteenth Amendment. Columbus & Greenville Railway Co. v. Miller, 283 U. S. 96, 100, 75 L. ed. 861, 865, 51 S. Ct. 39 (1931); Risty v. City of Sioux Falls, 270 U. S. 378, 390, 70 L. ed. 641, 651, 46 S. Ct. 236 (1926); Trenton v. New Jersey, 262 U. S. 182, 192, 67 L. ed. 937, 943, 43 S. Ct. 534 (1923); Newark v. New Jersey, 262 U. S. 192, 196, 67 L. ed. 943, 946, 43 S. Ct. 539 (1923); South Carolina v. Katzenbach, 383 U. S. 301, 323, 15 L. ed. 2d 769, 784, 86 S. Ct. 803 (1966); Cranford County v. City of New York, 38 F. 2d 52, 55 (1930); Wisconsin v. Zimmerman, 205 F. S. 673 (1962).

C. The Alleged Violations of the Fourteenth Amendment Create No Discrimination Against Appellant.

Appellant's Jurisdictional Statement states that the questions presented are violations of the equal protection and due process clauses of the Fourteenth Amendment because of disparate methods of valuation as between railroad and non-railroad property **whereby a discriminatory share of the property tax is shifted from railroad to non-railroad taxpayers.** It is the locally assessed taxpayers against whom the discrimination is alleged to exist, and they are not parties to and do not prosecute this appeal. The People and the tax collector allege no discrimination against themselves because there is none. Only the persons aggrieved by an alleged violation of the Fourteenth Amendment are entitled to claim its protection. Columbus v. Greenville Railway Co. v. Miller, 283 U. S. 96, 100, 75 L. ed. 861, 865, 51 S. Ct. 39 (1931); Clark v. Kansas City, Kansas, 176 U. S. 114, 118, 44 L. ed. 392, 396, 20 S. Ct. 284 (1900); Roberts & Schaefer & Co. v. Emmerson, 271 U. S. 50, 54, 70 L. ed. 827, 833, 46 S. Ct. 375 (1926); Tileston v. Ullman, 318 U. S. 44, 46, 87 L. ed. 603, 604, 63 S. Ct. 493 (1943).

D. The Appellant's Right of Review on Direct Appeal Is Foreclosed by Failure to Make a Timely Presentation of the Constitutional Grounds Before the Supreme Court of Illinois.

The appellant here contended in the two briefs filed in the Supreme Court of Illinois prior to its 1965 decision that a determination by the Supreme Court that the railroad assessments were at full value would violate the uniformity clause of the Illinois Constitution. Casual reference was made to the equal protection and due process clauses of the U. S. Constitution; however not one decision of this Court was cited in relation to the Fourteenth Amendment. Despite appellant's assertion to the contrary in its Jurisdictional Statement, in neither of these briefs was the point raised that a determination by the Supreme Court that the railroad properties were assessed at full value would result in construing the uniformity clause of the Illinois Constitution in a manner to bring it in conflict with the Fourteenth Amendment. It was not until the Supreme Court of Illinois rendered its decision that the appellant for the first time in its petition for rehearing raised this question. This question raised for the first time in the petition for rehearing is not timely and is insufficient to confer jurisdiction on this Court to review the case on direct appeal. Charleston Federal Savings & Loan Assn. v. Alderson, 324 U. S. 182, 185, 89 L. ed. 857, 860, 65 S. Ct. 624 (1945); American Surety Co. v. Baldwin, 287 U. S. 156, 163, 77 L. ed. 231, 236, 53 S. Ct. 98 (1932); Bushnell v. Crook Mining & Smelting Co., 148 U. S. 682, 37 L. ed. 610, 613 (1893); Loeber v. Schroeder, 149 U. S. 580, 584, 37 L. ed. 856, 859, 13 S. Ct. 934.

E. No Question Respecting the Constitutionality of a State Statute Is Involved.

As stated in Appellant's Jurisdictional Statement, these appeals merely question whether the uniformity clause in Article IX, Section 1 of the Illinois Constitution, or the statutes of Illinois, **as interpreted and applied** in this cause by the Supreme Court of Illinois, are repugnant to the equal protection and due process clauses of the Fourteenth Amendment, and whether the Supreme Court of Illinois violated the equal protection and due process clauses of the Fourteenth Amendment by ordering property tax refunds as a result of such interpretation and application of Illinois law. No claim is made by Appellant that the state laws *per se* are repugnant to the Constitution or laws of the United States. Thus no grounds exist for direct appeal to this Court under section 1257 (2) of the Judicial Code of 1948 [28 U. S. C. A., Sec. 1257 (2)]. Charleston Federal Savings & Loan Assn. v. Alderson, 324 U. S. 182, 185; 89 L. ed. 857, 860; 65 S. Ct. 624 (1945).

F. No Substantial Federal Question Is Involved.

The appellant raises only an evidentiary question.

Despite the fact that the record, exhibits and briefs in the prior cases were voluminous, there was but one issue on which the Illinois Supreme Court was required to pass on the first appeal:

> "The only issue, therefore, is whether the railroads' properties were assessed at full, fair, cash value for the years in question. This should involve only a question of fact to be viewed in the light of the law as developed and crystallized through a succession of these cases." (People ex rel. Musso v. CB&Q RR. Co., 33 Ill. 2d 88, 90.)

The appellant's jurisdictional questions are founded on the premise that there was arbitrary action of the Su-

preme Court of Illinois in (a) judicially determining the valuation of non-railroad property in a manner which reflects post-World War II inflation while (b) ignoring such inflation in the valuation of railroad property. The determination of value of all property is essentially a question of fact. It is thus inherent in the questions presented that appellant contends that the Supreme Court determined the value of railroad and non-railroad property and that there is a complete lack of evidentiary support in the record for the determination so made. The appellant completely distorts the Illinois Supreme Court's decision. It did not find the value of non-railroad property; that was done by the trial court, no one appealed from that determination, and the Supreme Court accepted that decision. As to railroad property, the Supreme Court only approved the method adopted by the Department of Revenue in valuing railroad property as one which would achieve substantially full value assessments of railroads. The use of judgment in the valuation of railroad property is repeatedly equated with the elimination or disregard of inflation. The mandatory use of inflated values in equalizing non-railroad property is equated with the official sales-assessment ratio studies.

It is axiomatic that if the record shows the findings were at the full fair cash values and had evidentiary support, the action was not arbitrary and there is here presented no federal question to support certiorari jurisdiction, and in the absence of creditable evidence to the contrary, the presumption of statutory compliance would provide adequate support to a finding of full value.

The appropriate procedures, methods and standards to be followed in determining railroad valuations for purposes of ad valorem taxation in Illinois are strictly State questions and the State Constitution and statute have assigned these functions under statutory guide lines to the Illinois Department of Revenue.

Whether the Department's findings of value in fact represented the full fair cash values of the subject railroad properties required by statute or whether through the use of spurious judgment such valuations were, in fact, reductions from full values are evidentiary questions which the Illinois Supreme Court was competent to decide with finality, unless there was neither presumption nor evidence to support the Court's decision. It is respectfully suggested that only if there is no evidence to support the findings and creditable evidence against them of a kind and quality sufficient to overcome the presumptions of statutory compliance, should this Court find that inequality or lack of due process is presented by this record.

The task of searching the record for and of analyzing and weighing conflicting competent evidence relating to the forty-six findings of taxable railroad valuations made by the Department upon which the 46 appealed judgment orders of the Illinois Supreme Court are based is not a federal, to say nothing of plenary, problem.

We further respectfully suggest that the record contains a great deal of creditable evidence directly and overwhelmingly establishing that the Department performed its function in good faith and assessed the railroads' properties at their full fair cash valuations.

The analysis of the evidence, contained in Appendices C, F and G, which follows this motion, clearly shows the railroads did not enjoy the benefits of any general inflation during the years of 1957 through 1962.

Appendix D shows the selling prices and the assessed valuations of six railroads which changed hands in the 1949-1961 era. Five of the roads were independent Class I, long-haul railroads. One was a belt line. In all but one of the transactions, the assessment exceeded the selling

price. In the single exception, the assessment was 99% of the selling price.

Appendix E shows the comparative influence given reproduction cost in the straight average formula which the Department used in its **approaches** to findings of taxable railroad valuation, between 1957 and 1962. Reproduction cost would have thus been given an influence under the formula in 1962 in the case of the C&NW of 74.8%, of the Pennsylvania of 75.31% and the New York Central of 72.25%. These percentage figures represent the number of dollars which would have been accorded the reproduction cost indicator of value in the valuation of the railroads if the formulaic **results**, which the trial Court adopted as the full fair cash value of the properties, were adopted. Graphs illustrating this absurd result from the rigid adherence to the formulaic approach in 1963 are also in the record (Objectors' Exhibits 104A and B, A. V. II, pp. 223, 224).

Appendix H is a table demonstrating that there existed no "hold the line" policy benefiting railroads. This analysis is predicated upon the exhibits of both parties, and the reflected analysis has not been questioned since its submission to the Illinois Supreme Court.

Appendices I and J are graphic portrayals of the fluctuating levels of assessment of all major Class 1 railroads from 1938-1962 and of each of the objecting railroads who here appear. The scale in every instance is that used in People's (Collector's) Exhibit No. 69 (A. V. II, p. 310).

'Part 1, Railroads, Transport Statistics in the United States,' for the year ending December 31, 1962, which appears as People's (Collector's) Exhibit 109, clearly indicates that the railroads did not participate in the benefits of the inflation during the subject period, because from 1952 to 1962—

1) Mileage owned and operated by all railroads declined from 222,508 to 215,090 and the mileage of Class I line-haul railroads declined from 212,838 to 205,216. (p. 3)

2) Freight carrying cars owned by Class I line haul railroads declined from 1,758,933 to 1,550,067 (p. 23). It may be noted that during this period, privately owned freight cars also declined from 274,472 to 269,475 (p. 22). In the Eastern District, which embraces most of Illinois, the decline was from 713,979 to 536,080. (p. 23)

3) In the same period, passenger train miles declined 30% (p. 24) and total passenger cars owned by railroads declined from 17,257 to 11,166. (p. 25)

4) As might be expected, traffic statistics were parallel or had an even greater decline. Total revenue passengers carried (thousands) declined from 469,537 to 311,739 and those carried one mile or more declined 48.97%, from 34,009,986 to 19,902,201. (p. 30)

5) Total freight tonnage (thousands), both carload and LCL, declined from 1,382,604 tons to 1,233,597 tons, only the products of agriculture showing an increase of 16,800 tons in the last year over first of the period. (p. 31). There were 19,826,704,266 freight train, loaded car miles operated in 1952 and only 17,013,664,254 in 1962. (p. 42)

It is obvious that whatever was happening to the remainder of the economy during this period in the general inflationary process following World War II, the railroads were not participants (Col. Exhs. 108 and 109). Had inflation affected railroad valuations, it would have been reflected in the market prices of stocks and bonds and capitalized income.

Cost Was Never Accepted as Reliable.

The People have predicated their entire case, both in the trial and Supreme Courts of Illinois and in this Court,

on the hypothesis that cost was a time-honored essential in an even-weighted 3-part equally weighted formula, both historically and under the provisions of the statute, and that by "judgment" only lately applied, cost has been practically eliminated. This is simply not the case. Not only does the statute not require its consideration in the evaluation process, but the Illinois Tax Commission in determining the procedures for the evaluation of railroads, evolved in the 1933-1937 era, and since followed by both the Commission and the Department, looked askance at reproduction cost as a reliable indicator of railroad value, while recognizing its usefulness in the allocation factor.[6]

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[6] The Commission stated in its 15th Annual Report covering the year 1933 as follows:

> "Primary emphasis, it is believed, should be given to earnings and stock and bond quotations in the valuation process. It is felt that these are a better reflection of the current market value of a railway than original cost. • • •
>
> "Up until the time when valuation appraisals were made by the Interstate Commerce Commission, few railroads had data on original costs. Now such information as they have is based on these appraisals, together with records of additions and betterments to date; **but even these records are far from satisfactory.**
>
> It is almost axiomatic that original costs are no measure of present values. The costs of reproduction have much more relation to actual values, **but if an operating railroad owns numerous useless facilities, the cost of reproduction is far from satisfactory. In an allocation factor in which mileage prorates and earnings data are employed, reproduction values seem to find a logical place. Their use for allocation purposes does not imply that they are being used for the purpose of determining the system values of the railroads in question. These values, as was explained above, are determined on the basis of earnings, stock quotations, and such weighting of physical appraisals as appears necessary to produce satisfactory valuations.** In allocation formulae, however, reproduction values give weight to the presence of facilities within a state." [Ill. Tax Com., 15th Ann. Rep. People's (Collector's) Exh. 34, A. V. II, pp. 281 and 282.]

In mentioning adjustments in the following years, changes in the RPCN (LD) was not mentioned. [Ill. Tax Com., 17 Ann. Rep. People's (Collector's) Exh. 36, A. V. II, p. 283.]

The Illinois Tax Commission itself sponsored the Railroad Assessment Act of 1937 (Collector's Exhibits 36, 37 and 38, A. V. II, pp. 283-291). This Act was incorporated in toto and without significant changes in Sections 80 to 87 of the 1939 Revenue Act and its provisions have from then been in force. There is included in the appendices to this brief the pertinent sections of the Illinois Constitution and the 1939 Revenue Act as in force since its adoption. The 1963 amendments to Sections 80 and 86 (App. D, Jur. St., p. A-50) have no present significance. The important thing is that Section 80 as it now appears and as contained in the 1937 Railroad Assessment Act shows that neither the Illinois Tax Commission nor the legislature considered reproduction cost as an indicator of railroad value which must be considered with income and market indicators, which the railroad assessor is required to consider. Cost is simply one of the items that may be looked at with the 5-year averages of capitalized income and stock and debt, and this was the decision in the **C&NW Valuation** case. (C&NW Ry. Co. v. Dept. of Revenue, 6 Ill. 2d 278.) Insofar as the provisions of the Act are concerned, the only required use of the reproduction cost, as annually reported by the railroad, together with much other information, is as a component of the formula by which the allocation factor is determined for the apportionment of income and stock and debt values (Chap. 120, § 565).

After the adoption of the 1937 Railroad Valuation Act, the Commission again noted that the reduced income and market indicators required a further adjustment of railroad valuations without mentioning cost.[7]

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[7] "Long-continued and increasingly aggravated financial difficulties of the railroad industry, reflected in lowered company earnings and in the market values for stocks and bonds, necessitated the reduction in the full values of their operating properties." [Pp. 15-16, 19th and 20th Annual Reports of the Illinois Tax Commission. People's (Collector's) Exh. 37, A VII, p. 285.]

The Commission for the first time in 1940 reported the technical revolution then well advanced in the transportation industry and the resulting economic obsolescence of railroad property as a result of the shift of large segments of railroad traffic to other new and expanding forms of transportation. The Commission then observed that it was

> "inevitable that the contraction in the physical plant, the precipitous falling off in earning capacity, and the disposition of investors to discount heavily the prospective earnings of the railroad industry should have made for a more rapid decline in railroad assessments than in the assessment of other types of property."

And discussing the effect of this revolution upon the assessment process, the Commission observed:

> "The elements that enter into the determination of the value of a particular property by an assessment agency are often difficult of analysis. Past earnings, the cost and condition of the property, the imputed value that the stock market places upon securities, general economic tendencies and the level of the previous year's assessment combine with the experience and individual knowledge of members of the Commission to affect their judgment. Mr. Justice Holmes has described the process by which valuations are arrived at: '. . . they express an intuition of experience which outruns analysis and sums up many unnamed, tangled impressions which may lie beneath the consciousness without losing their worth.' • • •
>
> "All through the process of determining an assessment the necessity for utilizing judgment arises, and in the final summary the 'tangled impressions' act directly upon the result. Formula assessments are not mechanical unless rules are developed to cover every possible contingency, a situation which is in-

capable of attainment." [21st and 22nd Annual Reports of the Illinois Tax Commission, People's (Collector's) Exhibit 38, A. V. II, 288, 289).]

Considering the use of judgment in the valuation of the operating property of a railroad this Court reached the same conclusion as the Illinois Tax Commission:

> "The ascertainment of the value of a railway system is not a matter of arithmetical calculation and is not governed by any fixed and definite rate. Facts of great variety and number, estimates that are exact and those that are approximations, forecasts based on probabilities and contingencies have bearing and properly may be taken into account to guide judgment in determining what is the money equivalent—the actual value—of the property."
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> Rowley v. Chicago & N. W. R. Co., 293 U. S. 102, 109; Rehearing denied 293 U. S. 632.

It cannot be said, since their own exhibits are to the exact contrary, that the exercise of judgment by an assessor, considering exactly the things to which assessors Danis and Koncel testified they gave consideration, was arbitrary. Nor can it be contended that the recognition by the Illinois Supreme Court of the exercise of judgment as an appropriate lawful final step in the approach to the evaluation of a railroad was unsupported by substantial evidence.

The court did not mandate the following of inflationary trends.

The Department performed its equalization functions upon the facts disclosed by sales—assessment ratio studies. These official ratio studies reflected the level of assessments and equalized assessment of a given county for the year surveyed, and have been found by the Illinois Supreme Court to truly reflect the ratios of assessed and

equalized assessments to the full fair cash value and the opinions in **Hillison, Kohorst** and **Wenzel** describe how they are conducted and show them to be free from criticism as to method and to comply with the statute. No question was raised in the lower Courts as to the method of conducting the official ratio studies or their results, and the People accepted the findings of the trial Court that the levels of assessment for each of the subject years of locally assessed property, after equalization, were those found by the Department.

Undoubtedly, many properties surveyed did increase in value and the sellers participated in the benefits of inflation insofar as the sale prices of their properties were concerned. But, it does not follow that all other properties which sold were thus increased in value, and in any case, it is clear that if the inflated properties had achieved a higher taxable value as a result of the economic circumstances affecting their selling prices, there was nothing arbitrary in the giving of effect to the higher values measured by such sale prices in the equalization process, as the statute required, in determining the county wide level of assessment.[8] The department did not by this procedure mandate complete reliance upon inflated prices. Nor did these studies tend to show that railroads were increasing in value through the inflation which may have affected non-railroad property, and the record shows they did not participate.

Neither Was Railroad Property Arbitrarily Assessed.

Railroad property is centrally assessed by the Illinois Department of Revenue on the "unit" basis. A unit as-

[8] As to method of conducting the official ratio studies, see **Hillison**, 22 Ill. 2d pp. 96-8; **Kohorst**, 22 Ill. 2d pp. 109-111; **Wenzel**, 28 Ill. 2d pp. 212-16. For standards of value of locally assessed property, see Sections 501 and 502, Chapter 120, Annotated and Ill. Rev. Stat., App. B.

sessment is an evaluation of all the railroads' operating property, including funds involved in operations and all other operating personal property, and, in case of an interstate carrier, its apportionment between Illinois and the other situs states by the application of an Illinois allocation factor. In the approach to an assessment, this allocation factor is applied only to the statutory value indicators of income and market, which the Department is required to consider. These allocated amounts are, in themselves, guides to the assessment and as a further guide are averaged on a ⅓, ⅓, ⅓ basis with I. C. C. reproduced cost less depreciation of the Illinois property of the railroad, adjusted to eliminate uneconomic property and physical obsolescence. Economic obsolescence is not adjusted out of the reproduction cost factor before its use in the formula. The formulaic result is then considered with the statutory factors and with all other information available to the assessor, who then determines by the exercise of judgment based upon his experience what the taxable value, i. e., the assessment, of the railroad is for the subject year. Railroad assessors Danis and Koncel both testified unequivocally that the railroad assessments were at full fair cash value. The reduction from the formulaic result which usually results from the application of the judgment of the assessor is referred to as the "judgment factor". The valuation so determined is distributed by the Department on a pro-rated mileage basis to all of the Illinois taxing districts in which the railroads' operating property is located.

The Illinois Supreme Court has repeatedly found that the method pursued by the Department was not arbitrary and complied with the statute. It could scarcely do otherwise.[9]

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[9] Musso, 33 Ill. 2d 88, 97; Korzen, 32 Ill. 2d 554. In the exercise of his final judgment, the assessor anticipated the future, paid most attention to earnings, and considered economic

The Nature of the Case—Constructive Fraud.

The subject tax objections were based on the **Callahan** case.[10] Under **Callahan**, there resulted constructive fraud

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obsolescence and many other things, such as, the trends upward and downward of operating income and of stock and debt prices, some based upon observation and others, including current economic conditions. In Illinois, the income and market factors have always been considered more reliable than cost, either investment or reproduction. The principal guide of Raymond S. Danis, as railroad assessor for the years 1933-1960, inclusive, was the capitalized earnings of a railroad, which was historical. Danis' procedures were followed by his successor, railroad assessor Edward F. Koncel (1961-1962) (Danis A 1, pp. 222-3, 228-30, 407-12; Koncel, A 1, 425, 427-430, 433).

See **C&NW Ry. Co. v. Dept. of Revenue**, 6 Ill. 2d 278, 128 N. E. 2d 722; **CB&Q RR. Co. v. Dept. of Revenue**, 17 Ill. 2d 376, 161 N. E. 2d 838. And see People's (Collector's) Exhibit 34, A. V. II, pp. 281-2 and 1959 testimony of Raymond S. Danis in previous Madison County tax cases. He was then railroad assessor and a witness for the People, A. V. I, pp. 402-415. Danis testified again in Lee County in 1960 while the incumbent assessor, as adverse witness to the railroads, A. V. I, pp. 281-291. After retirement, Danis was a witness in this case, A. V. I, pp. 218-235. Edward F. Koncel testified as Court's witness in the case while the incumbent railroad assessor, A. V. I, pp. 415-441.

[10] **People ex rel. Callahan v. GM&O RR. Co.**, 8 Ill. 2d 66, was the first tax objection case considered by any Illinois Court after the effective date (1-1-46) of the full value (Butler) Reform Legislation of 1945. In this case the GM&O objected to 45% of the taxes levied upon its property in Madison County for the year 1951 claiming it had been assessed at full fair cash value as the statute required while other property subjected to the same taxes in Madison County had been assessed that year at not to exceed 55% of full fair cash value as the law required. The railroad sought to be refunded the difference between the amount of tax extended against its property and what the tax would have been had the tax base included locally assessed property at 100% of the full statutory standard. This was in effect a new remedy and based upon the statute as amended in 1945. The Illinois Supreme Court held the objection to be appropriate, but the particular form to be technically objectionable. Subsequently, other similar objections to taxes levied for the years 1952-1957, inclusive, in Madison County were amended or pleaded to meet the technical objection of the Court in **Callahan**, and were consolidated and tried, vigorously and comprehensively, over a 16 months period. These objections were sustained and the final orders, all in similar form, were entered on November 3, 1959. (See Objectors' Exhibits 46, 46A-E, A. V. II, pp. 143-159.)

as a matter of Illinois law, without regard to any provision of the Illinois or federal Constitutions. It evolved as a remedy for the beleaguered taxpayer to whom the 1945 full valuation reform legislation had been faithfully applied while other taxpayers had not been similarly affected. From these facts constructive fraud was irrebutably presumed.

It is significant that in none of the cases in which relief was granted upon the basis of **Callahan** does the Court find that, by the relief granted, it is achieving uniformity under the Constitution of Illinois or due process or equal protection under the 14th Amendment.

In the **Burlington Valuation** case, 17 Ill. 2d 376, the railroad sought to compel the Department to exercise its constitutional duty to secure uniformity in the assessment and equalization of the 1957 assessment of the railroad. The Supreme Court held that "with the enactment of the Butler amendments to the Revenue Act in 1945, the General Assembly required that all valuations upon which tax rates are extended must be at full, fair cash value. It is the duty of the Department to carry out the statutory mandate". The Court then referred the railroad to **Callahan** as providing an appropriate remedy for the recovery of any excess taxation due to the gross discrimination complained of by the railroad.

While several of the Objectors linked their rights to relief under **Callahan** with their right to be protected by the 14th Amendment and uniformity clause of the State Constitution, the facts alleged and the relief prayed in every instance were the same in substance as the Illinois Supreme Court had approved in **Callahan**. The railroads in all proceedings in the trial Court and on appeal proceeded upon the simple issue of constructive fraud. (A. V. I., pp. 4-7, 47-8, 66-7, 71.)

It follows that, so far as the remedy is concerned, this case does not draw in question the validity of any Illinois statute on the grounds of its being repugnant to the Constitution, nor does the remedy involve a single substantial federal question. It is entirely and adequately based upon well-settled non-federal grounds, namely, the provisions of the 1939 Revenue Act of the State of Illinois, as amended in 1945, requiring the assessment and equalization of railroad and of all other property at full fair cash value, and specifying the means for equalizing locally assessed property at that value, and the subsequent violation of the statute in the assessment and equalization of locally assessed property at less than 50% of statutory standard, and the resultant constructive fraud.

Public Importance Is Greatly Exaggerated.

While it is true that during the period from 1957 to 1962, all railroads operating in Illinois made objections similar to those here involved, there have been practically no objections of this sort made since 1962. In 1963, the legislature in Illinois, realizing the plight of the railroads, amended the Revenue Code, Par. 561, Chap. 120 (see Appendix B), to provide that for assessment purposes, the fair cash value of the railroads' property as determined by the Department should be equalized with locally assessed property by a factor which is the state-wide average ratio of the equalized assessed value of locally assessed property to the full fair cash value of such locally assessed property. This ratio since 1962 had been approximately 50% with the result that the railroads' valuations for tax purposes have been reduced by 50%. Thus the lack of equalization which was the basis of objections has been remedied and the discrimination which formerly existed has disappeared.

CONCLUSION.

Wherefore, appellees in this Court for the reasons assigned herein respectfully pray that these appeals be dismissed or that the judgments of the Supreme Court of Illinois be affirmed and that the petition for writ of certiorari be denied.

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APPENDIX

APPENDIX

APPENDIX A.

Opinions of Illinois Supreme Court in Earlier and Concurrent Companion Cases.

Callahan. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Company,* 8 Ill. 2d 66, 132 N. E. 2d 544.

This was the initial tax objection case following the Butler Full valuation reform legislation of 1945, and was based upon the full valuation of railroad property by the Department, absent the power of equalization to reduce railroad full value assessments to assessment levels of locally assessed property. The railroad appealed from an order striking the objection based upon the discrimination under the statute between the full value assessment of railroad and a less than 55% level of assessment of locally assessed property. The right to the remedy was questioned by the People.

> "The parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value (Ill. Rev. Stat. 1951, chap. 120, pars. 501, 502). By its stricken objections, appellant, whose property was assessed at State level along with other railroads, alleged that its own property has been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally under valued at less than full, fair cash value. * * *. Appellant objected against paying taxes on rates higher than would have been developed if locally assessed property had been at one hundred percent full, fair cash value in the taxing formula by which rates were computed. Translated into figures, it is appellant's contention that because locally assessed property was fraudulently and intentionally valued at less than full, fair cash value, the resulting increase in rates caused its tax bill of $45,017.81 to be excessive by $18,578.38.
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> "Some question is raised as to whether appellant, who admits that its own property was correctly assessed, has pursued the proper remedy. We find, however, that this court has observed on several occasions that since valuations must be the result of honest judgment and not of mere will, it follows that an assessment may be impeached both when fraudulently

made at too high a rate, and when fraudulently made at too low a rate.' (*People's Gas Light and Coke Co. v. Stuckart*, 286 Ill. 164, 174; *Chicago, Burlington & Quincy Railroad Co. v. Cole*, 75 Ill. 591, 594.) Further, in a long line of cases, it has been held that the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes. (See: *People ex rel. Ross v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 381 Ill. 58, 61, and cases there cited.) Here the essence of appellant's objections is that there was a fraudulent discrimination resulting from the undervaluation of locally assessed property which had the effect of denying appellant equal protection of the Revenue Act, and of subjecting it to taxation lacking in both constitutional and statutory uniformity. We conclude that a proper remedy has been pursued" (pp. 67-69).

C&NW 1953 Valuation Case. *C&NW Ry. Co. v. Dept. of Revenue*, 6 Ill. 2d 278, 128 N. E. 2d 722, Certiorari denied 351 U. S. 950. Rehearing denied 352 U. S. 859.

In this case, the railroad contended that its assessed valuation exceeded the full fair cash value of its property, and complained of the use of reproduction cost in the formula and the use of judgment in reducing the formulaic result by a smaller percentage in its valuation than in the valuation of 41 other railroads, since the basis of the judgment reduction was not disclosed, although the railroad had sought such disclosure in the examination of the railroad assessor, Raymond S. Danis.

"Plaintiff also appears to suggest that a discrimination has occurred with respect to the Department's practice in setting its final assessment at a figure which is lower than the figure produced by its formula. In plaintiff's case there was a reduction of $10,980,000, about 11 per cent. Forty-one of the other railroads received reductions which were larger percentagewise. The remaining lines received smaller reductions. The record does not disclose the basis for these reductions, either in plaintiff's case or in the case of other railroads. A difference not shown to be the result of caprice or intentional discrimination is not enough to invalidate the assessment. (*Cf. Department of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 488.) Plaintiff points out that as a result of the various reductions the final assessment of thirty-seven of the lines is a figure approximately equal to, or less than, the figure which would have been obtained had the Department ignored reproduction cost in its formula. The implication, which is not

expressly drawn by plaintiff, is that the Department, under the guise of making a reduction in assessments has in fact applied to railroads other than the plaintiff a formula based only on capitalized earnings and security prices. From what we have already said it is clear that this charge must be rejected. It is unsubstantiated in the record before us, and the reductions made by the Department may well rest on reasonable, though undisclosed grounds" (pp. 289-290).

Burlington 1957 Valuation Case. ***CB&Q RR. Co. v. Dept. of Revenue,*** **17 Ill. 2d 376, 161 N. E. 2d 838. The formulaic average had been reduced from $195,183,000 to $147,000,000, which the railroad contended was excessive. The Burlington contended that the Department should equalize this valuation further to conform to the state-wide average level of assessment of locally assessed property.**

"Plaintiff is an interstate railroad operating in 12 States. In determining the 1957 assessed value of its Illinois operating property, the Department took into account: (1) the capitalized value of the average of net system railway operating income for the past five years; (2) the market value of stock and debt, using a five-year average; (3) the cost of reproduction less depreciation of physical property located in Illinois. An allocation fraction was then applied to the first two items to determine the portion of the total system value represented by Illinois assets, and a judgment factor was used which substantially reduced the average of the three items. This method of valuing railroad operating property is used in assessing all railroads in Illinois, and it complies with the statutory requirements. *Chicago and North Western Railway Co. v. Department of Revenue,* 6 Ill. 2d 278" (p. 379).

Pointing out that the 1945 Butler Reform Legislation had terminated the previous authority and duty of the Department to equalize and thus secure uniformity under Sec. 1, Art. IX, of the State Constitution (or equal protection and due process under the State and Federal Constitutions), the Court found that the Department could not assess or equalize railroad property at less than the statutory standard of full fair cash value, and confirmed the remedy of tax objection to meet the alleged discrimination as approved in Callahan.

"What the court referred to as the "recognized custom" of the State Board of Equalization and the Tax Commission

in prior years, to debase or equalize assessed valuations of railroad operating property below full value in order to achieve uniformity with local assessments, is no longer permissible under the Revenue Act. Compare Ill. Rev. Stat. 1937, chap. 120, par. 56.8, in effect when *Mobile and Ohio Railroad Co. v. Tax Commission*, 374 Ill. 75, was written, with Ill. Rev. Stat. 1955, chap. 120, par. 567. With the enactment of the Butler amendments to the Revenue Act in 1945, the General Assembly required that all valuations upon tax rates are extended must be at full, fair cash value. It is the duty of the Department of Revenue to carry out the statutory mandate. Assessments made by the Department must be at full value (Ill. Rev. Stat. 1955, chap. 120, pars. 502, 561) and local assessments must be equalized by the Department to full value by increasing or reducing the aggregate assessed valuations made in the several counties. Ill. Rev. Stat. 1955, pars. 627, 630.

"The Department, however, refused to consider the plaintiff's evidence on the ground that the hearing requested by the plaintiff was concerned with the Department's duty to assess the value of railroad operating property and not with its duty to equalize local assessments throughout the State to full value. We think the Department was correct. It has no authority to reduce its assessed valuation of the plaintiff's property to less than full value. And the time sequence prescribed by the Revenue Act for local assessment of property makes it unlikely that the various county equalization factors will have been determined at the time the Department is valuing railroad property. (Cf. Ill. Rev. Stat. 1955, chap. 120, pars. 581, 588, 591, 592, 609, 627, 629a; *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120.) But appropriate remedies are available if the plaintiff's property is in fact bearing a disproportionate share of the tax burden in some taxing districts. Plaintiff may petition the Department for a reconsideration of the equalization multiplier certified to a county clerk for application to local assessments. (Ill. Rev. Stat. 1955, chap. 120, par. 629a.) And such an objection may also be raised to a county collector's application for judgment and order of sale of its real estate. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Co.*, 8 Ill. 2d 66" (pp. 390-391).

Hillison. ***People ex rel. Hillison v. CB&Q RR. Co.,*** **22 Ill. 2d 88, 174 N. E. 2d 175.**

The Burlington here objected to 1958 taxes in Lee County, Illinois. Counsel for the People assisting the State's Attorney was the attorney for the State Department of Revenue and also an Assistant Attorney General. Here the railroad pursued on its 1958 taxes the remedy of

Callahan to which it had been referred by the Illinois Supreme Court in its 1957 valuation case, 17 Ill. 2d 391. The People contended that neither the uniformity clause nor the due process or equal protection provisions of the State and Federal Constitutions applied to require equity on the level of assessments, since railroad property could be properly assessed and taxed as a separate class, also, that, since the Department had, through judgment, debased its equalization factor to produce a level of assessment of less than 55% of full value for locally assessed property, the Court should assume that the reduction resulting from the use of judgment in the valuation of railroad property similarly produced a debased assessment from full value. The Court held that the discrimination complained of was founded upon the Illinois Revenue Act, as amended in 1945, and not on Constitutional grounds.

> "Before dealing with the main substantive question, it is necessary to dispose of one further argument of plaintiff. Plaintiff, relying on certain language in *People ex rel. Prindable v. Union Electric Co.*, 392 Ill. 271, argues that the constitution does not require railroad property to be assessed and taxed uniformly with other property, but that railroad property is a separate class, and that all that the constitution requires is uniformity within the class. Whether the legislature might constitutionally have provided for the assessment of railroad property at its full value while other property is assessed at only 55% of full value is not before us. The legislature has not so provided. The statute requires all property to be assessed at its full value, and the trial court found that the Department has failed to comply with the statute. It remains to be considered whether the findings of the trial court are supported by the evidence. * * * (p. 96).
>
> "The record shows that the Department, in assessing defendant's railroad property, initially computed the average of three factors which this court has upheld as properly bearing on the valuation of railroad property. (*Chicago and North Western Railway Co. v. Department of Revennue*, 6 Ill. 2d 278). These three factors are (1) capitalized value of earnings, (2) market value of stock and debt, and (3) reproduction cost, less depreciation, of the operating property located in Illinois. The average of these factors resulted in an initial figure of $205,153,000. Thereafter, in the exercise of its "judgment factor," the Department arrived at an assessment of $147,000,000 for defendant's railroad property for 1958. Plain-

tiff argues, in effect, that if the ratio studies of the Department are to be accepted as indicating that locally assessed property was equalized at no more than 55% of full value, then the average figure of $205,153,000 should be accepted as the actual value of defendant's property, so that the final assessment of defendant's property at $147,000,000 represented only about 73% of its full value.

"This argument has considerable surface appeal, but we cannot agree with it as applied to the particular situation. In considering both the assessment of railroad property and the equalization of other property there is an initial presumption that the Department complied with its statutory duty. Therefore, in the absence of evidence to the contrary, it will be presumed both that defendant's property was assessed at full value and that locally assessed property was equalized at full value. In the case of the locally assessed property the evidence presented by the defendant, including the ratio studies of the Department, was deemed sufficient by the trial court to overcome the *prima facie* presumption. No evidence was introduced by plaintiff. The trial court therefore found that locally assessed property was equalized by the Department at not more than 55% of full value. We believe the trial court was warranted in so finding (99-100).

"The valuation of railroad property poses a different problem. Here the concept of market value has little practical application. Since railroads are not bought and sold on the market, the legislature has provided that their fair cash value shall be determined by the Department of Revenue (Ill. Rev. Stat. 1957, chap. 120, par. 561), and reasonable discretion must be given to the Department in performing this task. The complex questions involved in assessing railroads have been the subject of recent litigation in this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) We have approved the use by the Department of a consideration among other things of the three factors of (1) capitalized value of earnings, (2) market value of stock and debts, and (3) reproduction cost, less depreciation. The fact that these have been recognized as factors which may properly be considered by the Department in assessing railroad property, however, does not mean that the average of these three factors or any other formula making use of them will necessarily equal or will be presumed to be the same as their actual value. Since there is no presumption that the average of these factors, or $205,153,000, was the actual value of defendant's property, the fact that the Department finally assessed defendant's property at a lesser figure does not indicate that the property was assessed at less than its full value and does not overcome the presumption that the Department properly assessed defendant's property at its full value" (pp. 101-102).

Kohorst. *People ex rel. Kohorst v. GM&O RR. Co., and C&NW Ry. Co.*, 22 Ill. 2d 104, 174 N. E. 2d 182.

The GM&O and C&NW railroads here appealed the decision of the Sangamon County Court overruling their objections to 1957 taxes based on **Callahan.** The case was submitted concurrently with **Hillison** and was decided on the same day. The availability of the remedy was under direct attack by the cross appeal of the People. The Court held the remedy to be based upon the Illinois statute, as amended in 1945, not the conformity or equal protection or due process guarantees, and rejected any implication of the debased value of the railroad property because of "judgment" in the Department's assessments of the complaining railroads.

> "We are fully aware that relief by way of tax objection is a cumbersome and ponderous process. Nevertheless, it is a legal remedy available to objectors and they have seen fit to pursue it. We now turn to the question of whether they have sustained the burden of proving gross discrimination amounting to constructive fraud.
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> "In order to establish their case objectors must show the level at which their property and that of locally assessed property was assessed, and that the difference was grossly discriminatory and hence constructively fraudulent. We will first consider the assessment of the railroads' properties.
>
> "It is the duty of the Department of revenue to assess all railroad property, other than noncarrier real estate, at its fair, cash value (Ill. Rev. Stat. 1957, chap. 120, par. 561) and the several factors used by the Department to determine such value have been approved by this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) The official reports of the Department state that objectors' properties were assessed at full, fair cash value, as do letters certifying the assessed values for the period of 1945 to 1957. There is a presumption of statutory compliance, and the testimony of Raymond S. Danis, railroad assessor of the Department, verifies the full valuation. There is no evidence in the record to overcome the presumption and proof, and we must conclude that objectors' property was assessed at 100%. * * * (p. 109).
>
> "In deciding the level to be used it must be borne in mind that this is not a case of equalization but is the seeking of a formula to provide a refund of discriminatory taxes" (p. 113).

Wenzel. *People ex rel. Wenzel v. C&NW Ry. Co.*, 28 Ill. 2d 205, 190 N. E. 2d 780.

The C&NW here pursued the remedy of **Callahan** in objecting to its 1956-1959 taxes in Macoupin County, Illinois. Here, although the railroad's valuations were attacked in the lower Court, the People conceded full valuation of railroad property in the Supreme Court and contested the procedures of the Department in the making of sales-assessment ratio studies. The Court held that the State itself was a nominal and interested party to the proceeding and could not be excused from a failure to produce any evidence in its files bearing upon the issue before the Court and rejected criticism of methods used by the Department performing its statutory functions.

> "We recognize that most courts, as a condition for such exception, require that the mass of documents thus summarily received in evidence be placed in the hands of the court, or at least be made accessible to the opposing party in order that the correctness of the evidence may be tested by such inspection as is desired. (4 Wigmore on Evidence, 3rd ed., sec. 1230.) This condition was met here, particularly when we consider that the State, which is both the nominal and an interested party in tax objection proceedings, (*People ex rel. Murray v. City of St. Louis*, 297 Ill. 199, 201-202,) has at all times had the mass and volume evidence at its disposal. * * * (p. 213).
>
> "At best the evidence shows two accepted methods by which the ratio between full and assessed value may be determined, each with its advantages and each with its disadvantages, and it is the decided weight of the evidence in this record that the sales-assessment method is the most widely accepted and used. Our statute requires only that the Department use such means as it deems 'proper and reasonable' to make its studies on assessed valuations, and a mere difference in opinion as to what is the best or most reasonable method is not sufficient to bring the matter within the range of judicial review. (Cf. *Schreiber v. County of Cook*, 388 Ill. 297, 311)" (p. 216).

Enrietta. *People ex rel. Enrietta v. GM&O RR. Co.*, 29 Ill. 2d 605, 195 N. E. 2d 174.

In this case, the GM&O pursued the remedy of **Callahan** in objecting to the 1958 discriminatory taxation of its

property in Grundy County, Illinois. The People contested the full valuation assessment of the railroad on the basis of the testimony of two expert witnesses, each of whom pursued a different formula from that of the department and who also differed between themselves. Each gave the cost factor less than ⅓ weight and characterized the Illinois ⅓, ⅓, ⅓ formula as archaic, and neither applied judgment to his formulaic result. All of the official documentary evidence before the Court in the instant case on railroad valuations, except the datum sheets of other railroads and for other years and the reports of the Illinois Tax Commission, prior to 1939, was present in **Enrietta.**

> "Raymond S. Danis, railroad assessor superintendent of the Department until his retirement on November 15, 1960, has been in railroad valuation work since 1927. As such assessor he assembled all data and prepared his opinion of value. He testified that several factors have been used for more than 30 years in the assessment of railroad property in Illinois, including a judgment factor, but that the primary one is capitalized income. The various factors made up a formula to which the judgment factor was then applied, but he emphasized that the formulaic result did not represent assessment value, and was a guide to be used for comparison purposes. Danis testified unequivocally that in his judgment the assessment of $49,700,000 represented the full, fair cash value of the objector's property in Illinois for 1959.
>
> "James R. Pollack, a city engineer and city manager prior to 1952, was called by the collector. * * * Martin D. Miller, an engineer and appraiser who is a partner in a consulting firm, was also called. * * * (p. 607). Each of these witnesses considered the Illinois system archaic and not adapted to modern conditions, but were not in agreement as to a proper formula to be used. * * * Neither applied a judgment factor and both indicated that the Department's application of that factor constituted debasement and equalization. * * *
>
> "A careful review of the entire record leads to the inevitable conclusion that judgment must be used by appraisers in the intricate problem of arriving at an assessed valuation of a railroad, whether it be by using various factors, then applying the judgment factor as is done in Illinois, or the choosing of a percentage for capitalizing net operating income and the fixing of the percentage weight to be given the reproduction cost factor.
>
> "The Department has chosen a method to carry out the statutory mandate and has used it for many years. That

method has received the tacit approval of this court in a number of cases. (See *Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376; *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.*, 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill. 2d 104.) This attack by the collector upon the method of valuation used by the Department charged with that duty by the State falls short of overcoming the presumption. We are of the opinion that the record bears out the Department's valuation as being the full, fair cash value of the objector's Illinois property" (pp. 608-609).

Korzen. *People ex rel. Korzen v. CB&Q RR. Co.*, 32 Ill. 2d 554, 209 N. E. 2d 649.

The Burlington here objected to 1957 taxes in Cook County, Illinois and pursued the remedy in **Callahan.** The evidence offered by the People in **Korzen** including annual reports to the Illinois Tax Commission and the Department of Revenue, datum sheets, graphs, questionable, suppositious railroad sales-assessment ratio studies and the prior testimony of Danis in **Hillison** was imported to Madison County and admitted in the subject cases. Except for some railroad data originating with the I. C. C. and the testimony of the witnesses Stiles and Hulman, and exhibits relating to their testimony, the People's evidence in **Korzen** and **Musso** (the instant case), is practically identical. **Korzen** was submitted and considered at the same term of the Illinois Supreme Court as **Musso** and the opinion in each case refers to the other. In **Musso** there was offered by the railroads and considered as admissions against interest the much earlier testimony of Danis appearing as railroad assessor and testifying on behalf of the People as admissions against interest at the trial of six GM&O valuation tax objections for the years 1952-1957 in Madison County. In **Korzen**, an association of school boards was permitted to file briefs as *amici curiae* to urge that the Court re-examine the principles announced in the above cited precedent cases, because of

the claimed financial impact of a reversal of the Cook County decision.

"In addition to the documentary evidence, the objector offered the evidence deposition of Raymond S. Danis, former Supervisor of Railroad Assessment, and Railroad Assessment Supervisor from 1948 to 1960, retired, who was not living at the time this case was heard. He prepared the data sheets upon which was computed a 5-year average of income capitalized at 6%, a 5-year average of market value of stock and debt less nonoperating properties, and the cost of reproduction depreciated of the Illinois property, as furnished by the Interstate Commerce Commission. The system factors of capital and market value were then allocated to Illinois and the Illinois costs of reproduction depreciated were added and the straight average of the three was determined. The straight average was not the assessment and neither was any of the three indicators considered alone. He used the average as a guide and applied his judgment to produce a recommended assessment value to the Director. His recommendations were usually followed. In the event the carrier protested and asked for a hearing, he and the Director would hear the protest and come to a conclusion. He cited as an example the Burlington's 1957 assessment which he fixed at $147,100,000 and following a hearing the Director reduced it to $147,000,000. Danis unequivocally stated that the resultant final assessment was the full fair cash value of 100%, and that there was no attempt to equalize such assessments with locally assessed property.

"At this point we think it appropriate to consider the Collector's attempt to impeach Danis by showing that his testimony in the Lee County *Hillison* case in 1960 was inconsistent with his evidence deposition given in this case in 1962 shortly before his death. His testimony in that case was introduced here. The Collector asserts that it indicated that another factor taken into consideration in arriving at the final assessment was a desire of the Department for continuity of assessments. Not a question was asked of the witness to lay a foundation for impeachment, and his death prevents an explanation. Under such circumstances the impeachment evidence is inadmissible. *Cf. People v. Moses,* 11 Ill. 2d 84; *Ayers v. Watson,* 132 U. S. 394, 33 L. ed. 378, 10 S. Ct. 116.

"This court has given specific approval to the factors used by the Department of Revenue to arrive at railroad valuations in *Hillison, Enrietta* and other cases. And where the Department assesses a railroad's operating property in accordance with the recognized and approved factors, it will be presumed to have been assessed at full value as required by statute. *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.,* 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.,* 22 Ill. 2d 104.

"We are aware of the impact of an adverse holding on the interested taxing bodies but, as readily recognized by *amici*

curiae, our decision cannot be based upon their financial needs. *Amici* argues 'the great improbability of accuracy here of presumptions traditionally indulged with respect to the acts of public officials and the contents of public records.' Nevertheless, such a presumption has an important role in our jurisprudence and cannot be ignored. Here, there is no competent evidence to overcome the presumption and, in fact, it is supported by Raymond L. Danis, an expert in this field, who prepared the assessment on behalf of the people through the Department of Revenue."

APPENDIX B.

Applicable Provisions—Illinois Constitution and 1939 Revenue Act.

Constitution of Illinois 1870.

ARTICLE IX.

Revenue.

"§ 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—*such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise;* * * * (Emphasis added), 1965 Ill. Rev. Stat., p. 21.

Revenue Act of 1939 as enacted and in force 1957-1962, incl. Chap. 120, Anno. Stat., or Rev. Stat. of 1961.

RULES FOR VALUING TAXABLE PROPERTY.

§ 501. Valuation of real property

Real property shall be valued as follows:

(1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(2) Each taxable leasehold estate shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(3) Each building or structure which is located on the right of way of any canal, railroad or other company leased or granted to another company or person for a term of years, shall be valued at its fair cash value, estimated at the price such building or structure and lease or grant would bring at a fair, voluntary sale.

(4) Any real property on which there is a coal or other mine, or stone or other quarry, shall be valued at its fair cash value, estimated at the price such property, including the mine or quarry, would bring at a fair, voluntary sale.

(5) In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property. (§ 20, as amended in 1945.)

(Subsequent Amendment of 1965 added par. (5) on public easements not relevant.)

§ 502. Valuation of personal property

Personal property shall be valued as follows:

(1) All personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * (§ 21).

Valuation of Railroad Property.

§ 561. Method of determining fair cash value

The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be non-carrier real estate as hereinabove defined.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate as hereinbefore defined; Provided that only so much of the intangible personality of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included. (§ 80, as amended in 1943 and in force prior to July 1, 1963.)

(As in force prior to equalization amendment of July 1, 1963.)

§ 561. Method of determining fair cash value and equalized assessed value

The Department shall assess all property owned or used by railroad companies operating within this State, as of April

first annually, except property found by the Department to be non-carrier real estate as hereinbefore defined.

In assessing the property of any railroad company, the Department shall first determine the fair cash value of such property.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate as hereinbefore defined: Provided that only so much of the intangible personalty of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included.

The Department shall determine the equalized assessed value of the property of every railroad company, other than non-carrier real estate, by applying to its determination of the fair cash value of such property of every railroad company an equalization factor, which factor shall be the statewide average ratio of the equalized assessed value of locally assessed property to the full, fair cash value of such locally assessed property. As amended 1963, Aug. 26, Laws 1963, p. 3422, § 1.

As amended July 1, 1963.

§ 563. Railroads' annual statement to Department of Revenue

In the month of April of each year every railroad company in this State shall return to the Department, in addition to any other information required by this Act, sworn statements or schedules as follows:

(1) The amount of capital stock authorized and the number of shares into which such capital stock is divided.

(2) The amount of capital stock issued and outstanding.

(3) The market value, or if no market value then the estimated value, of the shares of stock outstanding.

(4) The total amount of all bonds outstanding and all other indebtedness.

(5) The market value, or if no market value then the estimated value, of all bonds outstanding and all other indebtedness.

(6) A statement in detail of the entire gross receipts and net earnings of the company during the five calendar years next preceding the assessment date within this State, and of the entire system from all sources.

(7) The length of the first, second, third and other main tracks and all side tracks and turnouts showing the proportions within this State and elsewhere.

(8) The reproduction cost of the property within Illinois and the total reproduction cost of all property of such company. Said reproduction cost, so far as applicable, shall be as last determined by the United States Interstate Commerce Commission, or other competent authority, plus additions and betterments, less retirements and depreciation to the December 31, next preceding the assessment.

(9) An enumeration and classification of all rolling stock and car equipment owned or leased by the company filing the return. The classification shall show type of equipment and circumstances of ownership and use. The enumeration shall include rolling stock used over the track of other companies under any trackage right agreement. All other property used in connection with a trackage right agreement shall also be listed.

(10) Any other information the Department may require to determine the fair cash value of the property of any railroad company, or necessary to carry out the provisions of this Act.

Such statements or schedules shall be made in conformity to such instructions and forms as may be prescribed by the Department.

In cases where a railroad company shall use property owned by another, the return shall be made by the using company, and all property operated under one control shall be returned as hereinbefore provided. (§ 82, as amended in 1943.)

§ 565. Interstate allocation of operating property

If any railroad company owns or uses operating property partly within and partly without this State, the commission shall determine the value of the entire operating property of such railroad but shall take only that part of such entire value as is represented by the average percentage of (a) the length

of all track including main, second and additional main track, side track and turnouts within this State, (b) its gross revenues arising from railroad operations in this State, (c) the reproduction cost of its operating property within this State, as determined by the Interstate Commerce Commission of the United States, or other competent authority, plus additions and betterments, less retirements and depreciation. Provided nothing in this section shall be construed to preclude the use or substitution of such other factors or methods as may appear reasonable and necessary in determining for any railroad the proportion of its operating property or any part thereof within this State. (§ 84.)

§ 567. Distribution of assessments made by Department

The full fair cash value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceeding $1,000, which shall be deemed to have a situs in the taxing district in which the same are located. * * * The Department shall equalize and distribute the full, fair cash value of the property of every railroad company (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county clerks of the respective counties *who shall extend taxes against such values the same as against other property in such taxing districts.* (§ 86, as amended in 1943.)

(Railroads taxed as real estate.)

§ 569. Record book for railroad property

The county clerk shall procure, at the expense of the county, a record book, the form to be prescribed by the Department, in which to enter railroad property as listed for taxation, and shall enter the valuations assessed, corrected and equalized in the manner provided by law; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. * * * *The taxes on all railroad property shall be extended as on real estate, and shall be subject to the same penalties, dates of payment and methods of enforcement as other real estate taxes.* (Excerpts § 88, as amended in 1945.)

As to both State and local assessed corporate stocks, fair cash value was also the standard.

§ 612. Powers of Department of Revenue

The Department shall have power:

* * * * * * *

(10) To adopt, from time to time, rules not inconsistent with law, for ascertaining *the fair cash value of the capital stock*, including the franchise, of corporations assessed by it, for ascertaining the fair cash value of railroad property assessed by it, and for the guidance of local assessment officers relative to the assessment of property for taxation. (Excerpts § 131, as amended in 1943.)

EQUALIZATION OF ASSESSMENTS BY DEPARTMENT OF REVENUE.

§ 627. Authority of Department to equalize

The Department shall act as an equalizing authority. It shall examine the abstracts of property assessed for taxation in the several counties as returned by the county clerks and shall equalize the assessments as in this Act provided. The Department shall[1] lower or raise the total assessed value of property in any county as returned by the county clerk so that such property will be assessed at its full, fair cash value.

By means of a comparison of assessed valuations, as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable, the Department shall annually ascertain and determine the percentage relationship, for each county of the State, between the valuations at which locally-assessed property is listed by assessors and revised by boards of review or boards of appeals, as the case may be, and the estimated full, fair cash value of such property.

With the ratio so ascertained and determined for each county, the Department shall then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent. (§ 146, as amended in 1945.)

---

[1] This Section was amended in 1959 to provide for certifications of equalization factors (multipliers) only in quadrennial assessment years rather than annually, but the section remained unchanged in requiring the Department to ascertain the level of assessment which resulted from the multipliers so certified for every year.

§ 632. Certification of equalization rates and Department assessments

When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks the percentage finally determined by it to be added to or deducted from the listed or assessed valuation of property in the several counties, as returned by the respective county clerks. The respective assessments made by the Department on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroad companies) shall be certified by it to the county clerks of the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such companies or associations are located.

The Department shall also certify to the county clerks of the proper counties the assessments made by it on property owned or used by railroad companies operating within this State, and the distribution of such assessments among the respective taxing districts within the several counties. The county clerks shall extend the taxes for all purposes on the respective amounts so certified, the same as against other property in the taxing districts to which such assessments of railroad property are allocated or distributed.

The assessments on the capital stock, including the franchise, of telegraph companies shall also be certified to the county clerks by the Department. (§ 151, as amended in 1945.)

§ 675. Payment of taxes—Payments under protest

Current taxes on real property shall be payable in 2 equal installments. The Collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. * * *

If any person desires to object pursuant to the provisions of Section 235 of this Act,[1] to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of said tax installments due, and such payment shall be accompanied by a (written protest) * * *

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes. * * *

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter

judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. * * * (Excerpts of § 194, as amended in 1957.)

§ 716. Proceedings by court—Form of order—Cure of error or informality

The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the count shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: * * * (Excerpt § 235.)

APPENDIX C

CLASS I RAILROADS: NET OPERATING INCOME, CAPITAL EXPENDITURES AND PERCENTAGE OF DOMESTIC INTERCITY FREIGHT TRAFFIC 1950-1961*

	1950	1955	1957	1958	1959	1960	1961
Net Railway Operating Income (Millions).....	$1,040	$1,120	$923	$762	$748	$585	$538
Expenditures for Capital Improvements (Millions):							
Equipment	779	568	1,008	489	568	633	427
Roadway & Structures..	286	340	387	258	250	286	319
% of Total Volume of Intercity Freight Traffic as compared to other means of transportation.....	57.44%	50.43%	47.62%	46.68%	45.68%	44.32%	43.86%
Average mi. of road operated in 000s.....	150	NA	113	NA	NA	88	85

NA means not available from Obj. Exh. 78.

APPENDIX D

COMPARISON OF SALES TO ASSESSMENTS FOR RAILROADS OMITTED FROM PEOPLE'S EX. NO. 104

Railroad	System Mileage	Yr. of Sale	Selling Price Ill. Operating Property	Assessment	Asmts. ÷ Straight Av. of 3 Value Indicators*	Assessment ÷ by Selling Price
Burlington R. R. Co.	7,972	1961	$120,761,956	$140,450,000	76%	116%
Baltimore & Ohio R. R. Co.	5,600	1961-64	25,875,920	26,565,000	82%	103%
Mpls. & St. Louis R. R. Co.	1,506	1960	3,913,977	3,900,000	68%	99%
Illinois Terminal R. R. Co.	344	1954	17,911,450	19,200,000	83%	107%
Illinois Northern R. R. Co.	10	1949	960,000	1,200,000	75%	129%
Indiana Harbor Belt R. R. Co.	N.A.	1961	11,075,950	12,950,000	70%	117%
Average						118%

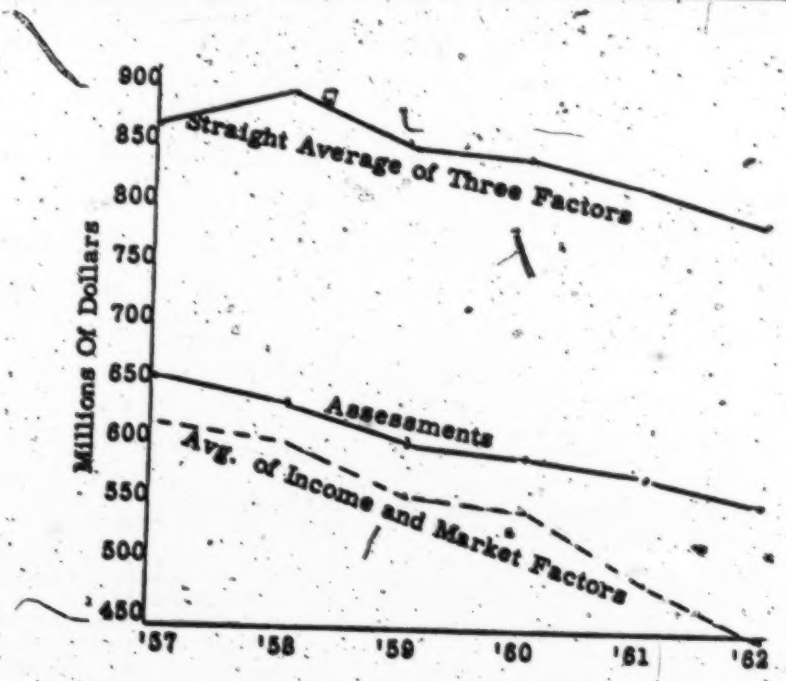
APPENDIX E

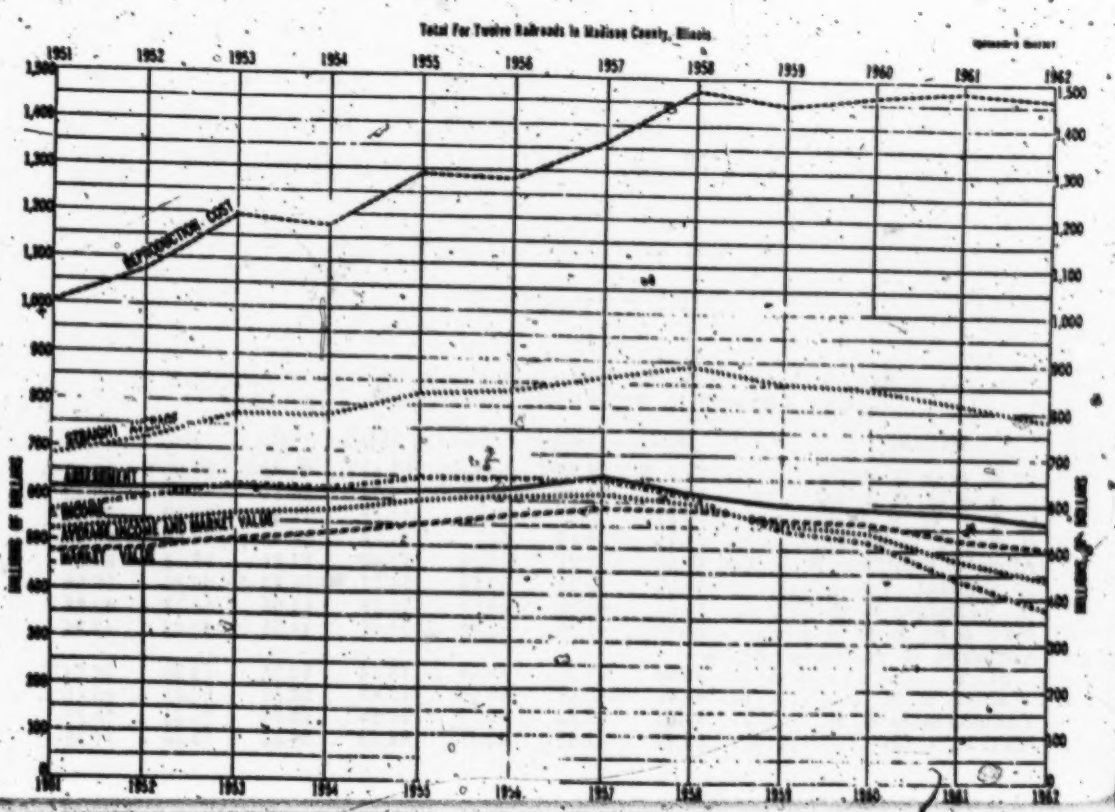
COMPARATIVE WEIGHT OR INFLUENCE OF REPRODUCTION COST FACTOR IN STRAIGHT FORMULAIC AVERAGE*

Railroad	1957	1958	1959	1960	1961	1962	1963
G. M. & O. R. R. Co.	50.6 %	55.38%	56.59%	58.61%	61.64%	63.00%	60.43%
C. B. & Q. R. R. Co.	50.94	54.29	55.44	56.04	56.81	58.39	55.53
C. & N. W. R. R. Co.	70.52	73.31	71.1	71.58	74.8	72.33	73.07
C. & E. I. R. R. Co.	48.11	50.13	51.	51.52	56.42	60.56	58.56
Alton & Southern R. R. Co.	30.66	31.81	33.54	34.65	37.21	37.78	34.8
Ill. Central.....	46.85	49.78	52.38	54.17	58.92	60.99	59.58
Ill. Terminal R. R. Co.	43.67	47.60	55.54	58.28	56.62	54.19	60.21
NYC & St. L. R. R. Co.	38.98	41.38	40.48	41.09	41.52	44.23	47.91
Terminal R. R. Assoc. of St. L.	46.68	49.02	49.54	48.96	50.75	52.20	56.54
Wabash R. R.	46.00	46.38	46.80	49.89	53.50	57.98	49.15
Pennsylvania R. R.	61.63	63.92	66.18	67.71	73.26	75.31	75.67
NYC R. R. Co.	59.45	61.58	63.71	63.62	68.52	72.35	77.35

APPENDIX F

GRAPHS ILLUSTRATING REASONABLE EXERCISE OF RAILROAD ASSESSMENT AUTHORITY BY DEPARTMENT OF REVENUE





APPENDIX G

ASSESSMENTS OF ILLINOIS RAILROADS
1938-1962
(Amounts in Thousands of Dollars)

	Class I Railroads		All Railroads	
	Equalized*	100% Full Value	Equalized*	100% Full Value
1938	$ 352,248	$ 633,120	$ 346,231	$ 948,616
1939	249,174	623,817	347,526	928,058
1940	220,459	629,884	318,477	909,936
1941	220,731	630,659	318,482	909,949
1942	220,740	668,909	315,065	954,742
1943	391,271	724,576	550,094	1,018,693
1944	374,008	733,350	520,147	1,019,897
1945	363,874	791,031	493,196	1,069,992
1946	.....	823,779	.....	1,093,748
1947	.....	819,924	.....	1,077,459
1948	.....	840,145	.....	1,078,971
1949	.....	843,168	.....	1,086,196
1950	.....	830,400	.....	1,075,593
1951	.....	837,510	.....	1,084,964
1952	.....	840,075	.....	1,088,193
1953	.....	848,200	.....	1,096,730
1954	.....	844,840	.....	1,090,815
1955	.....	847,995	.....	1,095,390
1956	.....	849,320	.....	1,098,034
1957	.....	856,150	.....	1,107,399
1958	.....	849,645	.....	1,090,335
1959	.....	824,830	.....	1,055,263
1960	.....	809,200	.....	1,032,528
1961	.....	805,020	.....	1,027,008
1962	.....	785,525	.....	998,363

* No equalization after 1945.

APPENDIX H.

Table Comparing Assessments in a Particular Year With the Immediately Preceding Year's Assessment to Show Lack of Uniform Treatment of Railroads by Assessing Officials and the Absence of a Policy of "HOLDING THE LINE".

(Source: For years 1935 through 1938 sources are Tax Commission Official Reports in evidence; for years 1939 and 1940 the 22 assessments shown are from Krucks' Exhibit of assessment history of 22 Class I Railroads, but the high and low percentage assessments are from the Department Reports; from 1941 through 1951 the 22 railroads are those shown on the Krucks' Exhibit and the reader is referred to the name of the railroad for the high increase and the high decrease percentages; for the years 1952 and 1953 and 1955 through 1961 the number of railroads shown are taken from the Department of Revenue Tables in evidence as noted, which are in consecutive tables; the 1954 assessment compared with 1953 takes all railroads appearing on both tables into account, not just Class I railroads, to determine if a larger sample would have any effect on the remainder of the exhibit, which it did not seem to have. Data for making the 1961-1962 computations is not in the record.)

Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1936 to 1935 (Assessments)	A 283.	All Roads	28	49	3	62%	27.5%
1937 to 1936 (Assessments)	B 284	All Roads	35	39	5	37%	30%
1938 to 1937 (Full value from now forward)	B 284 (Table xi)	Class I	11	20	0	31% (T.P.&W.)	12% (Chi., Ind. & Louisville)
1939 to 1938	D C 286	22 Class I	11	11	0	34.49%	24.08%
1940 to 1939	D C 287	22 Class I	12	7	3	135.29%	47.54%
1941 to 1940	D	22 Class I	10	7	5	5% (C&NW)	7% (Wab.)
1942 to 1941	D	22 Class I	21	1	0	11% (C&NW)	2% (Nickel Plate)
1943 to 1942	D	22 Class I	21	1	0	13% (C&NW)	1% (I. C.)
1944 to 1943	D	22 Class I	12	5	5	5% (C&NW)	12.5% (So.)
1945 to 1944	D	22 Class I	17	4	1	23% (Mo. Pac.	7% (Soo)
1946 to 1945	D	22 Class I	19	2	1	6% (I. C.)	18% (T. P. & W)
1947 to 1946	D	22 Class I	3	7	12	5% (Wab)	14% (T.P.&W)
1948 to 1947	D	22 Class I	10	5	7	11% (TP&	8% (Penn.)

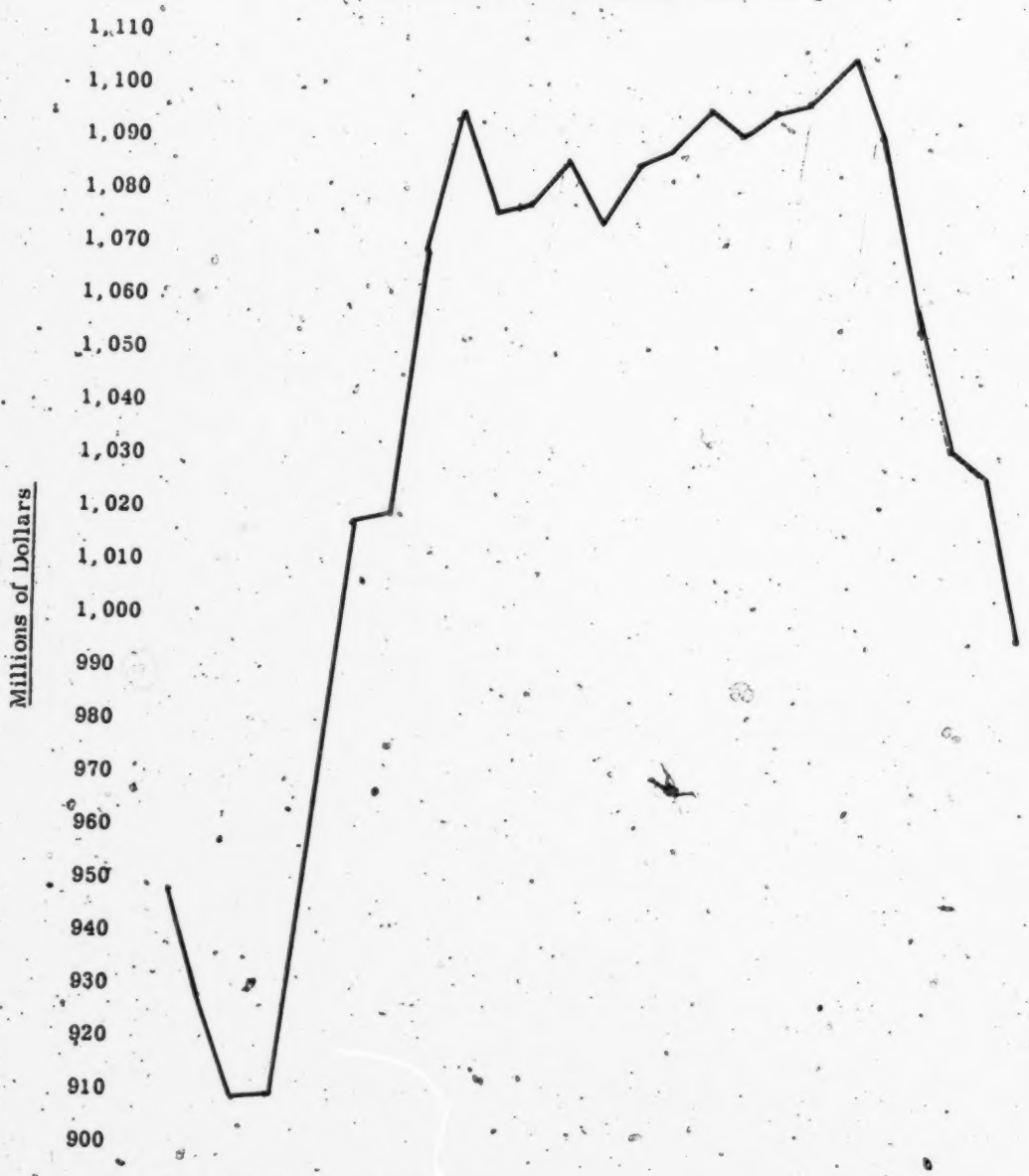
Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1949 to 1948	D	22 Class I	5	2	15	20% (TP& W)	2% (Penn.)
1950 to 1949	D	22 Class I	5	10	7	10% (TP& W)	5% (N. Y. C.)
1951 to 1950	D	22 Class I	14	4	4	18% (C&O)	3% (Penn.)
1952 to 1951	F E	All Class I	19	5	5	12% (C&O)	1% (Ill. Term)
1953 to 1952	G	All Class I	26	10	2	31% (C&O)	3% (Ill. Term)
1954 to 1953	H	All RR's Assessed by State	5	49	17	5% (Ind. Har. Belt)	4% (Mil. Rd.)
1955 to 1954	I	Class I	23	4	11	5% (C&EI)	4% (C&NW)
1956 to 1955	J	Class I	20	3	16	10% (C&O)	6% (Ill. Term)
1957 to 1956	K	Class I	28	4	5	6% (C&EI)	6% (C&NW)
1958 to 1957	L	Class I	1	28	9	0.7% (C& NW)	9% (Union Station)
1959 to 1958	M	Class I	0	34	4	None	9% (Chicago River & Ind.)
1960 to 1959	N	Class I	4	27	8	2% (St. L. Southwestern)	10% (Chicago & W. Ind.)
1961 to 1960	O	Class I	5	31	1	5% (St. L. Southwestern)	3% (Wab.)

Sources:

A. Coll. Exh. 36, Pages of Abst. Vol II as Noted.
B. Coll. Exh. 37, Pages of Abst. Vol II as Noted.
C. Coll. Exh. 38, Pages of Abst. Vol II as Noted.
D. Obj. Exh. 103, Abst. Vol II, 219-21.
E. Coll. Exh. 5, Abst. Vol II, 273.
F. Coll. Exh. 6, Abst. Vol. II, 274.
G. Obj. Danis Exh. 1A, Abst. Vol II, 240.
H. Coll. Exh. 8, Abst. Vol. II, 275.
I. Obj. Danis Exh. 1B, Abst. Vol II, 241.
J. Coll. Exh. 10, Abst. Vol II, 276.
K. Obj. Exh. 38A, Abst. Vol II, 85.
L. Obj. Exh. 38C, Abst. Vol II, 87.
M. Obj. Exh. 38E, Abst. Vol II, 89.
N. Obj. Exh. 38G, Abst. Vol II, 91.
O. Obj. Exh. 38I, Abst. Vol II, 93.

APPENDIX I

"FAIR CASH VALUE" OF RAILROAD
OPERATING PROPERTY IN ILLINOIS
1938 - 1962 *
Total - All Major Class I Railroads

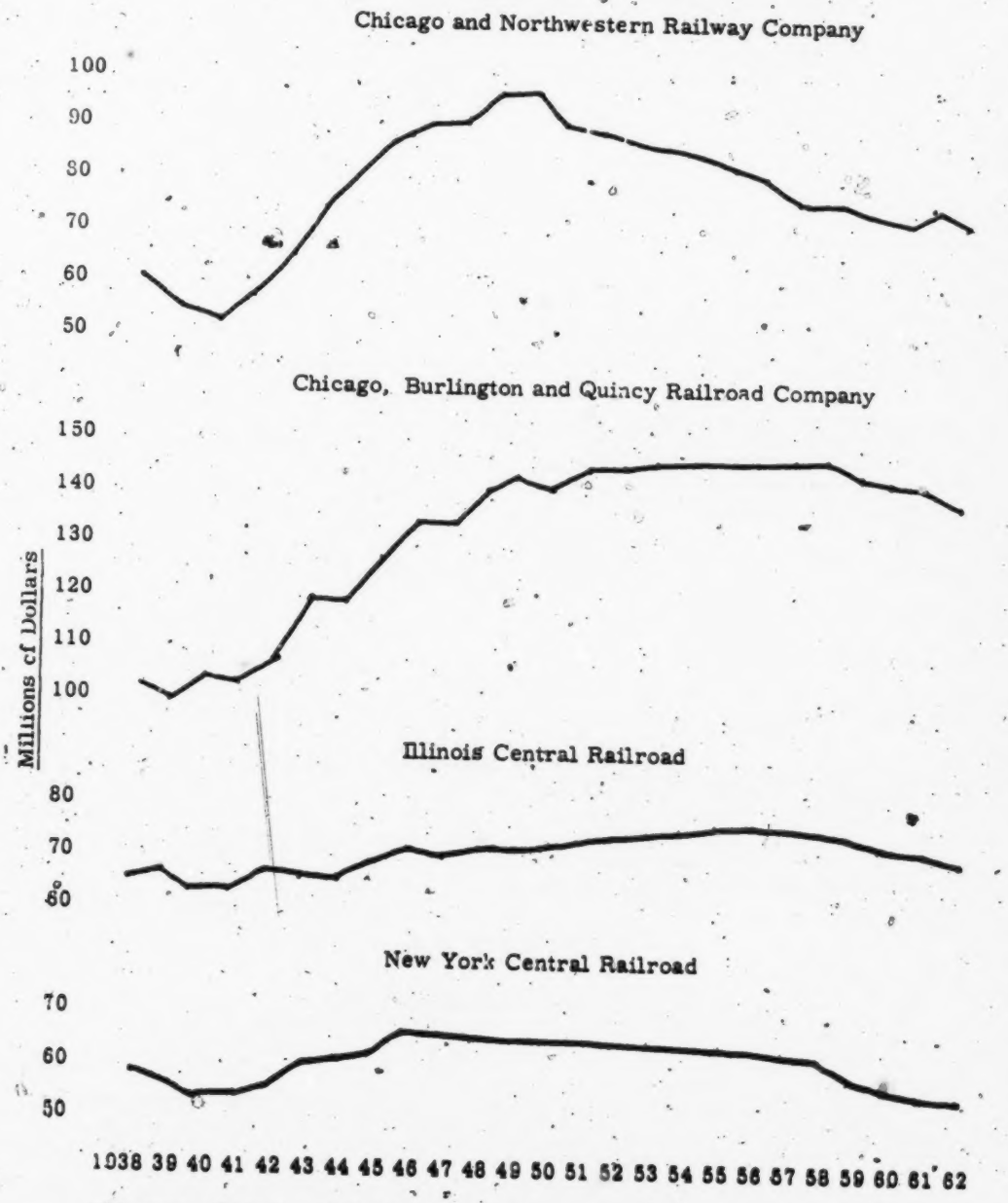


* Source: Objectors' Exhibit 103 and Collector's Exhibit 59A.

APPENDIX J

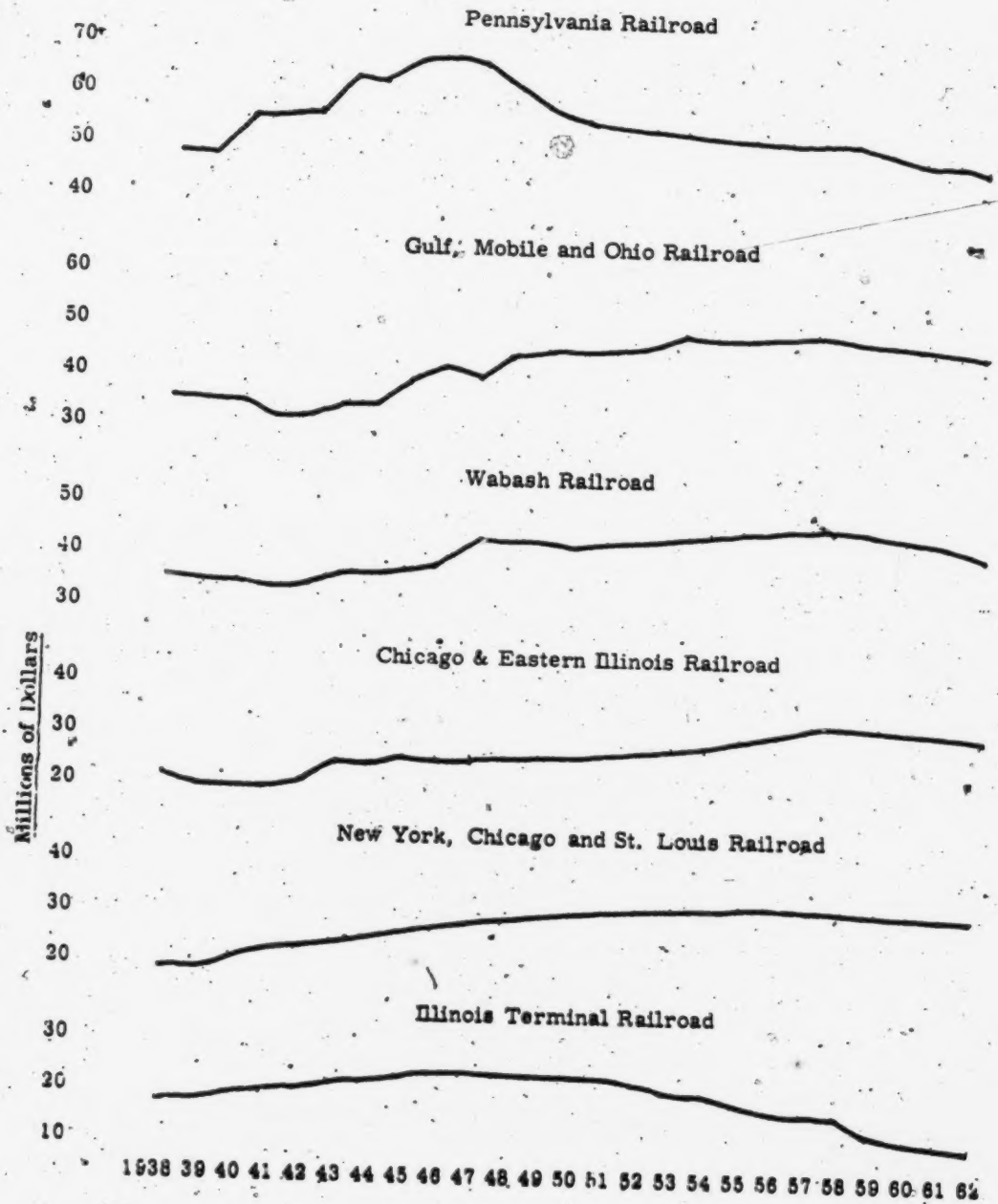
INDIVIDUAL GRAPHS SHOWING FLUCTUATIONS IN RAILROAD ASSESSMENTS, 1938-1962

FAIR CASH VALUE OF OBJECTORS' OPERATING PROPERTY IN ILLINOIS 1938 - 1962 *



*(Source: Objectors' Exhibit 103. Alton and Southern Railroad and Terminal Railroad Association are not included because they are not Major Class I railroads.)

APPENDIX J (Cont'd)



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 670

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MARAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTH-WESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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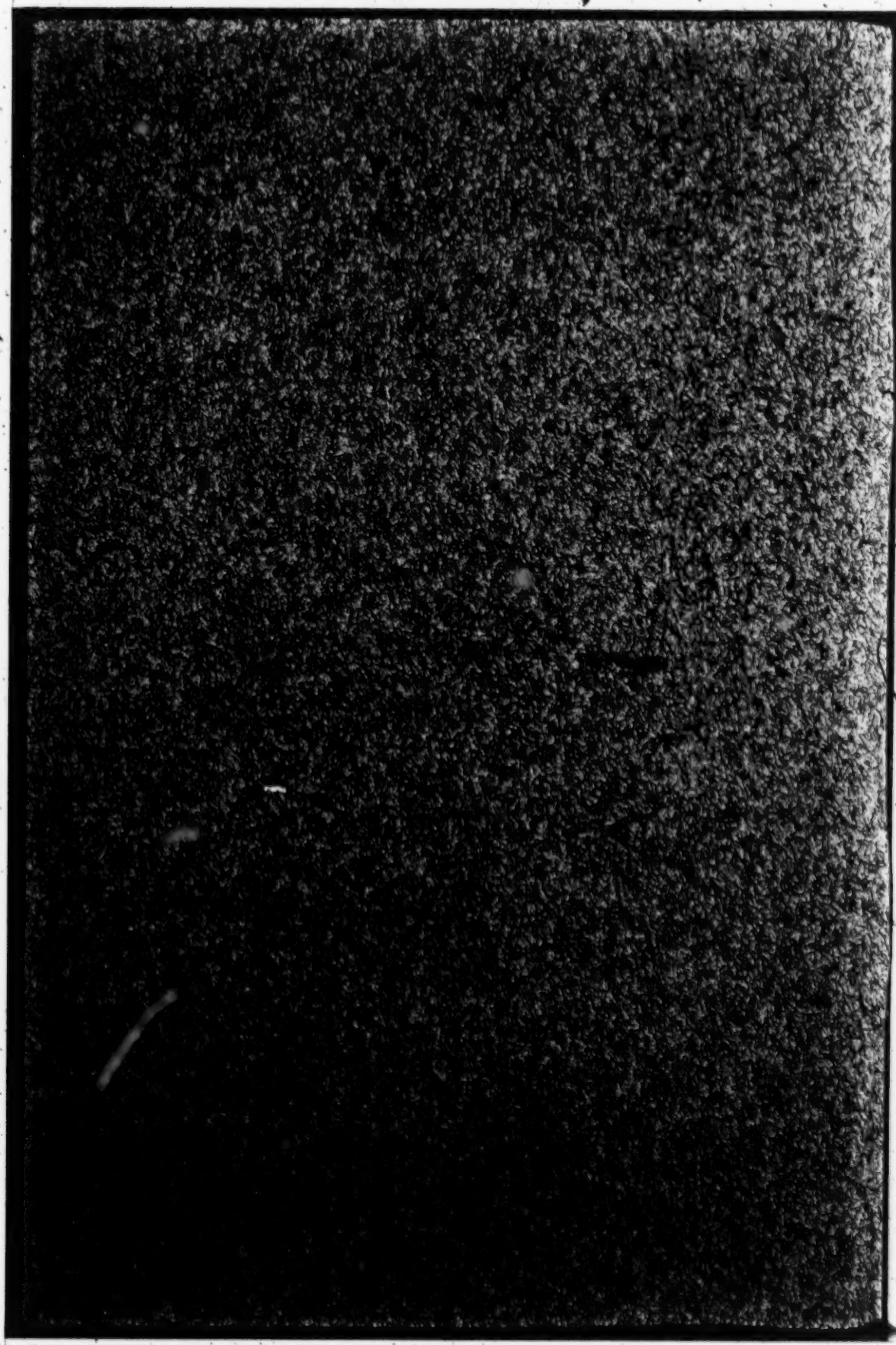

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 670

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MAERAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois, Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTHWESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, Appellees.

On Appeal from the Supreme Court of Illinois

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

Appellees' Motion avoids comment on the substantiality of the constitutional questions involved in this appeal as explained in the Jurisdictional Statement.[1] Appellees deny

[1] Though the questions presented necessarily involve Fourteenth Amendment limitations on property tax discrimination against railroad property, and though certain railroad spokesmen have long remonstrated against property tax discrimination vis a vis non-

the existence of the questions presented and alternatively assert that the questions; substantiality aside, are not within the Court's jurisdiction. We submit that in light of the Jurisdictional Statement and prior decisions the questions are substantial and merit plenary consideration rather than summary disposition. See **Louisville & Nashville Rr. v. Melton, 218 U. S. 36, 49 (1910); Milheim v. Moffatt Tunnel Dist., 262 U. S. 710, 716-17 (1923).**

With deference we submit that the unusual complexity of the case renders both the jurisdictional points and the constitutional questions, as well as the matter of standing, inappropriate for summary disposition. This unusual complexity has led to many inaccurate recitals in Appellees' Motion. Appellant's counsel are presently without the enlarged opportunity for advocacy which accompanies a hearing on the merits.

Congress has conferred appeal, or obligatory, jurisdiction on this Court in only a small group of cases arising from state courts. 28 U. S. C., § 1257 (1) (2). Summary disposition of this complex appeal will conflict with Congressional intent which contemplates disposition of cases within the scope of § 1257 in the light of the added understanding and insight derivable from briefing, oral argument and full deliberation. Furthermore, we submit that the complexities here are such that the spirit of the due process clause in the Fifth Amendment requires that Ap-

---

railroad property, Appellees are now silent about the importance of this Court's rendering a clarifying interpretation of the Fourteenth Amendment which would benefit both non-railroad taxpayers and the railroads. See Ogden, "Railroads Deserve Tax Equality," 1960 PROCEEDINGS OF THE NATIONAL TAX ASSOCIATION 378, 387; Pierce, "The Case Against Discriminatory State Assessment of Railroad Property for General Property Tax Purposes," 70 Public Utilities Fortnightly No. 7, 434 (1962); "Tax Outrage," Railway Age 21-22 (December 1963) (claiming that of $193,296,558 ad valorem taxes paid by railroads in 24 states for 1961, $112,979,417, or 58.45%, was excessive because of discriminatory levels of assessment).

pellant be granted the opportunity to present a brief on the merits and to argue orally and that the case receive plenary consideration.

JURISDICTION

I. Appellees' Motion Obscures the Constitutional Nature of the State Court's Action Which Brings This Case Within the Scope of the Court's Appeal Jurisdiction

A. "Constructive Fraud" is a Judicial Label in Illinois for Property Tax Discrimination Violative of the State Uniformity Clause

Appellees' representation at 27-9 that the basis of the decision below is "constructive fraud . . . without regard to any provision of the Illinois or Federal Constitution" is false. The representation is anchored at 3, 27-29 to Appellees' misunderstanding of **People ex rel. Callahan v. GM&O, 8 Ill. 2d 66 (1956).** Mr. Justice Schaefer placed **Callahan** in its proper perspective in **CB&Q v. Dept. of Revenue, 17 Ill. 2d 376, 390 (1959).** There the railroad charged, as the Appellees have charged in the case at bar, that the Director of Revenue, in the discharge of his duties as chief property tax administrator, had discriminated against their property. Referring to a failure of proof, Justice Schaefer wrote,

> "If this charge can be substantiated, as to 1957 assessments, the plaintiff's operating property is bearing a disproportionate share of its tax burden in violation of the constitutional requirement of uniformity. Article IX, Sec. 1, Const. of 1870; People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Co., 8 Ill. 2d 66; Mobile and Ohio Railroad Co. v. Tax Commission, 374 Ill. 75."

The words "constructive fraud," as utilized by the Supreme Court of Illinois in some property tax cases in-

volving allegations of **discrimination**, mean **discrimination violative of the uniformity clause in Article IX, Section 1 of the State Constitution.**[2]

Appellees' use of the words "constructive fraud" in defining the basis of the state action challenged here obscures this Court's appeal jurisdiction. Similarly, Appellees' use of the term "judgment" obscures this Court's view of the substance of the State Court's actions, as their use of the word obscured the view of the Court below of the substance of the Director's actions. Since 1961, in order to decide issues of railroad-alleged property tax discrimination, the Supreme Court of Illinois, in **valuing** non-railroad property, has **rejected** the Director of Revenue's "judgment" which he had used to ignore inflation in **equalizing** locally assessed property assessments, and, in **valuing** railroad property, has **adopted** the administrator's "judgment" which he had used to ignore inflation in **assessing** railroad property.

In relating **assessments** to **values** the Supreme Court below has exercised its judicial power conferred by Article VI, § 1 of the Illinois Constitution to enforce the uniformity clause in Article IX, Section 1 of the Illinois Constitution, notwithstanding the fact that Article IX, Section 1 also provides that valuation is "to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise." If the Supreme Court of Illinois had been controlled by the quoted language, it

---

[2] See Cushman, "The Judicial Review of Valuation in Illinois Property Tax Cases," 35 *Ill. L. Rev.* 689, 694-5 (1941); "'Overassessment' and 'Discrimination' Issues in the Supreme Court of Illinois, 1859-1959," People's Brief, Appendix A, II Ill. Sup. Ct. 88; People ex rel. Hillison v. CB&Q, 22 Ill. 2d 88, 96 (1961); People ex rel. Kohorst v. GM&O and C&NW, 22 Ill. 2d 104, 105, 113-4 (1961). See also Parham, "Taxation of Property in Illinois," U. Ill. L. F. 645, 646, 647 (1961).

Emphasis is added throughout this brief unless otherwise noted.

could not legitimately have granted relief to the railroads.[3]

B. The Second Appeal to the Supreme Court of Illinois Established That the Federal Questions Were Decided by That Court in the 1965 Appeal; Ambiguity of the 1965 State Court Decision, Now Removed, and Lack of Finality, Now Removed, Reasonably Explain Dismissal in 1966 of the First Appeal to This Court.

The Record now before the Court establishes that the state uniformity clause underlay the 1965 decision of the Supreme Court of Illinois and that the constitutional questions now presented here were then presented, considered and rejected. See, *e.g.*, Jurisdictional Statement A-2, 3, 4. When this case was here on appeal the first time, the Rec-

[3] The railroads at 13, 18 persist in asserting that Appellant challenges the actions of the Director of Revenue, the responsible chief official of the Department of Revenue. The fact is, of course, that Appellant has defended the Director of Revenue and challenges only action of the Supreme Court of Illinois. It is the railroads who have challenged the actions of the Director of Revenue and the trial court. See 12-13 *infra*. Throughout this litigation the railroads have refused to acknowledge the functional difference between valuation of property, on the one hand, and assessment of property, on the other. Assessment is always an administrative function. Valuation, like equalization, may be either an administrative or a judicial function. In the discrimination case now before the Court, the valuation and equalization functions are judicial. In 1949, when post-World War II inflation was first creating serious problems for property tax administrators, the importance of the valuation problem in the equalization of assessments was articulated by Mr. E. L. Maynard, Chief of the Property Tax Division, Chicago office, of the Illinois Department of Revenue: "It should be emphasized at this point, I believe, that there is a fundamental difference between assessment and equalization. . . . It seems that the essential element in equalization is the determination of the common denominator or yardstick. Without such a yardstick it is impossible to measure variation in assessment levels in different areas and for different classes of property. Since assessments are supposed to be according to value, value must be our yardstick and our concept of value must be clear and certain." MAYNARD, THE ILLINOIS PROGRAM OF EQUALIZATION, PROCEEDINGS OF THE NATIONAL TAX ASSOCIATION 268-269 (September 1949).

ord was ambiguous concerning whether the federal questions had been decided by the Supreme Court below. The 1965 opinion of the Court below provided only a fleeting glimpse into the basis of the decision: "discrimination."[4] Moreover, there was uncertainty here about whether the federal questions had been before the Court below during the first appeal to that Court, not because of lack of presentation, but because it was arguable, during the first appeal to this Court, that the only points before the Court below in 1965 were the points raised by the railroads in challenging the trial court's 1964 judgments which the railroads had appealed. The People, represented by the Tax Collector and the State's Attorney, were then **defending** those 1964 judgments. Accordingly, the defensive points made by the People before the Supreme Court of Illinois in 1965 included federal questions which were arguably hypothetical in the sense that they were directed against judgments which had not then been entered but which might in the future be entered as a result of the impending decision of the Court below. When the Supreme Court of Illinois in 1965 did reverse the trial court's 1964 judgments and ordered new judgments be entered on remand, its opinion gave no indication whether it had considered and decided the federal questions. Such was the Record before this Court on the first appeal here.

The 1965 judgments appealed to this Court were not final. Hence, there was no point in this Court's taking action in the first appeal here to clarify the basis of the 1965 decision below. See, *e.g.*, Note, "Supreme Court Treatment of State Court Cases Exhibiting Ambiguous Grounds of Decision," 62 Col. L. Rev. 822, 831-3 (1962). With deference we submit that the reasonable grounds for the Court's dismissal of the first appeal "for want of jurisdiction" may well have been a combination of the ambiguous state of the Record concerning the disposition

[4] Jurisdictional Statement A-11, 12, 23.

by the state court of the federal questions and the lack of finality of the judgments appealed.

The first appeal to this Court was necessary in the event that the 1965 judgments below were deemed final. The second appeal to the Supreme Court of Illinois, which resulted in the 1967 judgment now appealed to this Court, was necessary not only to establish finality but also to clarify whether or not the federal questions had been decided in 1965, and, if they had not, to obtain a ruling on them from the state court of last resort. Therefore, during the remand proceedings before the trial court the Appellant explicitly preserved the constitutional questions in a statement filed with the trial court. (The statement is in the Record.) Thereafter, on April 20, 1966, the trial court, despite the presentation of the federal questions, obeyed the mandate of the Supreme Court of Illinois and entered new judgments. Then Appellant filed notices of appeal to the Court below, again asserting the constitutional questions. One of these questions was not a federal question, *i.e.*, whether the April 20, 1966, judgments violated the uniformity clause of the state constitution. When we advised this Court of these developments during the first appeal here from the 1965 judgments by filing copies of the documents with the Clerk and by reciting the facts in our Brief in Opposition to the Appellees' Motion to Dismiss, it became apparent, due to the ambiguous nature of the 1965 opinion of the Court below, that, in then pending second appeal to the Court below, the Supreme Court of Illinois could decide the case in our favor on an independent state ground. That possibility has been exhausted and, we submit, the federal questions are now unavoidably before the Court.

II. The Appeal is Timely.

Appellees assert at 10-12 that the final judgments in this litigation under 28 U. S. C., § 1257, were the April

20, 1966, remand judgments entered by the trial court and not the 1967 judgment of the Court below. Support for our position that the 1967 judgment was the final judgment derives in part from the consideration that not until the entry of the 1967 judgment could it be or was it clear that the Supreme Court below had decided the constitutional questions in the first appeal. We invite the Court's attention to the fact that during the **second** appeal the Court below considered briefs of the parties **on the merits of the constitutional questions and heard oral argument.** (The documents are in the Record.) Appellees' presentation at 7-8 fails to communicate that prior to the filing of briefs in the second appeal to the Court below, the Supreme Court of Illinois denied Appellees' Motion to Dismiss the appeals because of the prior adjudication and thereafter granted plenary consideration to the questions presented. (We believe the Motion and ruling are in the Record.) In our view, the Court below, given its conclusions, should, after considering briefs and arguments both on the merits and on the issue of the binding effect of the prior decision, have affirmed the April 20, 1966, judgments, not dismissed the appeals from them. **Vischer v. Northwestern Elevator Rr. Co., 256 Ill. 572-574 (1912).** In any event, the dismissal was tantamount to affirmance.

Even if the Court below considered itself bound on the second appeal by the determinations in the first appeal, and even if the second appeal had been a mere formality, which it was not, the second appeal would still be a prerequisite to this Court's review. **McComb v. Commissioners, 91 U. S. 1, 2 (1875); Great Western Tel. Co. v. Burnham, 162 U. S. 339, 341-3 (1896).**

We submit that the argument of the Appellees that the remand judgments entered by the trial court constitute the final judgments for the purpose of determining federal jurisdiction is not persuasive in a situation where,

at the time the trial court entered judgments on remand, the remanding state court of last resort had failed to reveal in its decision whether it had decided the federal questions. If the Appellant had appealed the April 20, 1966, judgments directly to this Court, while necessarily pursuing the second appeal to the Supreme Court of Illinois, the Appellees could have made here a persuasive argument that the April 20, 1966, judgments were not final. Moreover, Appellant, for the second time, would have brought to this Court a Record—from the trial court—which still remained ambiguous as to whether the federal questions had been decided by the state court of last resort. Appellees' argument would require that Appellant have perfected three appeals to this Court.

Even if, *arguendo,* the April 20, 1966, judgments were final for purposes of federal jurisdiction, the Supreme Court below had jurisdiction to review them. The one case cited by the Appellees to support their position, at 11, holds only that a trial court judgment on remand **may** be a final judgment. The case does not involve the question of the point in time from which the time for filing a notice of appeal begins to run. In the case at bar, time began to run from the date on which the petition for rehearing in the Court below was denied in 1967; *i.e.,* the date when that Court finally refused to disturb the trial court's April 20, 1966, judgments. **American Railway Express Co. v. Levee, 263 U. S. 19, 20-21 (1923).**

III. Appellant's Presentation of Federal Questions Was Timely

At 15 Appellees contend that Appellant did not timely raise the federal questions in the Court below during the 1965 appeal to that Court. We cannot comprehend this argument in view of the fact that the Supreme Court

of Illinois in its 1967 decision made clear that these questions had been decided in its 1965 decision.[5] **Cumberland Coal Co. v. Board, 284 U. S. 23, 24 (1931).**

IV. Appellees' Motion Obscures Uniformity Clause Enforcement by the Supreme Court of Illinois Requiring Valuation of Non-Railroad Property According to Inflated Prices Notwithstanding the Administrator Had Valued Non-Railroad Property Without Regard to Inflated Prices in Equalizing Local Assessments

Appellees at 17 omit mention of four decisions of the Supreme Court of Illinois which set the stage for the case at bar. When the trial court in 1964 valued non-railroad property in response to railroad charges of discrimination, it relied on the sales ratio studies conducted by the staff of the Director of Revenue. These studies are based on current—and therefore inflated—prices. In this action the trial court was bound by **People ex rel. Hillison v. CB&Q, 22 Ill. 2d 88, 96-99 (March 29, 1961); People ex rel. Kohorst v. GM&O and C&NW, 22 Ill. 2d 104-112 (March 29, 1961); People ex rel. Wenzel v. C&NW, 28 Ill. 2d 205 (May 27, 1963); People ex rel. Enrietta v. GM&O, 29 Ill. 2d 605, 609-11 (November 26, 1963).**[5a] In these four property tax discrimination cases, the Supreme Court of Illinois had as a matter of sound economics and specific data,

[5] See 5-7 *supra;* also, Jurisdictional Statement A-2, 3, 4. The Court below concluded in the 1967 decision, "This is a deliberate attempt to relitigate the *same* issues presented in the prior appeal" (emphasis added). Cases concerning the timely raising of points in a Petition for Rehearing include *Brinkerhoff-Faris Trust Co. v. Hill,* 281 U. S. 673, 677-8 (1930); *Ohio ex rel. Bryant v. Akron Park District,* 281 U. S. 74, 79 (1930).

[5a] While these cases were based on records which contained full evidence concerning the sales ratio studies and the Director's having ignored the results of the studies in certifying equalization multipliers to the counties—evidence sponsored by the railroads—the records did *not* contain the data which permitted the Court to perceive the equalizing function of the "judgment factor" reductions in the administrative formulation of railroad property assessments. See n. 15 at 19 *infra.*

undiluted by "judgment," ruled that the value of non-railroad property must be determined according to the sales ratio studies. The Court had determined in the four cases that the Director of Revenue (the responsible official in charge of the Department of Revenue) had failed to increase local assessments to the full value established by these studies, even though the Director had been under a statutory **duty** to increase local assessments to full value.[6] The Court had rejected the contention that in valuing non-railroad property it should adopt the "judgment" of the Director, who had ignored the results of the sales-ratio studies. See **People ex rel. Hillison v. CB&Q, 22 Ill. 2d 88, 98-99 (1961).** The Court had four times found that the Director of Revenue had violated the state's uniformity clause. Appellees' representation at 17 that the valuation of locally assessed property based on inflated prices was "done by the trial court . . . and the Supreme Court accepted that decision" is misleading. Appellees' statement at 24, "The Department performed its equalization functions upon the facts disclosed by sales-assessment ratio studies" is false.[7] The Supreme Court of Illinois found just the opposite.

Appellees at 25 deny that the determination of the level of assessment of non-railroad property by reliance on the sales ratio studies means valuation based on inflated prices.

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[6] Appellees state at 9 only that the Director was "empowered" to increase local assessments to full value. See Jurisdictional Statement A-56, 57 for the statutory "shall."

[7] In addition to testimony by two members of the Director's staff, the Record contains testimony by Appellees' own witness, economist Rolf Weil, a former staff member. This testimony establishes beyond question that the Director ignored these studies in performing his equalization functions with regard to locally assessed non-railroad property. See also Weil, "Property Tax Equalization in Illinois," NATIONAL TAX JOURNAL (June 1953); *accord,* Pealy, "A Comparative Study of Property Tax Administration in Illinois and Michigan" 99 (1956) (Bureau of Government, Institute of Public Administration, University of Michigan).

Appellees' denial reflects no understanding of the nature of the sales ratio studies conducted by the staff of the Director of Revenue and of those underlying the Bureau of Census determinations. The Record contains much evidence, most of it sponsored by the railroads, about these studies and the suppression of their inflationary results by the Director in the certification of equalization multipliers to the counties.[8]

V. Appellees' Motion Obscures Uniformity Clause Enforcement by the Supreme Court of Illinois Requiring Valuation of Railroad Property Without Regard to Inflated Prices and Increased Investment by Offering Irrelevant and Misleading Material to Rationalize the "Judgment Factor" Reductions Used by the Administrator to Assess Railroad Property Without Regard to Inflated Prices and Increased Investment

At 20-24 Appellees offer a misleading rewriting of administrative history in Illinois concerning valuation of

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[8] An assessment-sales ratio study involves an annual study relating (sometimes on a sampling basis, sometimes on a total basis) sales prices, for the year or shorter period under study, of real estate, mostly residential, agreed upon between buyers and sellers in arms length transactions, with corresponding equalized assessments of the traded properties. The relationship of assessment to price for all measurable or sampled transactions in the jurisdiction studied are statistically combined and appropriately weighted to produce a ratio for each county and for the entire state. Assessment-sales data permit nothing more than the derivation of ratios. These ratios do not produce the "level of assessment" *unless* it is decided that current prices are to be the sole criteria of value. (The relation of two numbers known as the "level of assessment" connotes a knowledge of two facts: assessment and value.) Once the decision is made to base value solely on current prices, the ratio automatically provides the level of assessment, and the value of locally assessed property is automatically imputable from the ratio. Thus, if the locally assessed property assessment-sales studies produce a ratio of equalized assessment to price of 50%, and the sales prices alone are to determine value, then one need only double the equalized assessments in the county or state in question to arrive at full value. In the example, if equalized assessments of local property total $1,000,000, then the value of that property is $2,000,000 because assessments are 50% of sales prices.

railroad property.[9] In doing so, they indulge an erroneous premise which denies that this case is on a constitutional level, and, therefore, action of the administrative process (and of the legislative process) is controlling. Inconsistently, Appellees abandoned that premise in arguing that the State court should find that the administrator had not increased local assessments to full value. On a constitutional level, neither is controlling, certainly not when administrative valuation of railroad property and administrative equalization of railroad property assessments with non-railroad property assessments were integrated obscurantly into the single act of assessment.

Appellees quote portions of administrative reports out of context, bringing to the Court's eye only language which acknowledges defects in one of the three elements of value which make up the traditional administrative valuation formula. In fact, the reports also discuss defects in the other two elements of value, thus explaining why, as this Record further explains, all three elements of value are used and averaged.

The quotation in n. 6 at 21 was for the year 1933, precisely the time when trained economists began to develop the articulated formula which gave equal weight to the three elements of value. At 92 of the Report for 1939-40 (I Ex.), the Tax Commission wrote,

> "With all its shortcomings, a good formula will produce results having advantages which far outweigh the disadvantages that an undocumented judg-

[9] Not the least of the misstatements in the Appellees' motion is the statement that "The principal guide of Raymond S. Danis, as railroad assessor for the years 1933-1960, inclusive, was the capitalized earnings of a railroad . . . ." The Record is unequivocally clear that Danis was not the staff man in charge of railroad property assessments before late 1949, although his civil service title might indicate that he was. That his principal guide after 1949 was *not* capitalized earnings may be ascertained by a study, *inter alia*, of the data 1951-55 in Appendix H of the Jurisdictional Statement.

ment brings about. It lends a certainty and definiteness to the assessment process which safeguards not only the tax administrator but the taxpayer as well . . . as long as the rules governing the use of a formula are uniformly applied, any modification of the result can be limited to a consideration of evidence not taken into account in the formula."

At 3 of the Report for 1941-42 (I Ex.) the Tax Commission wrote, "It should be emphasized in the first place that other factors than income are taken into account in arriving at railroad assessments; stock and debt valuations, as reflected in market quotations, and I. C. C. reproduction cost figures both are factors of great significance in reaching conclusions respecting the full, fair cash value of railroad property."

Appellees' effort to rationalize the "judgment factor" as a part of the valuation formula (hiding the nature of the "judgment factor" as an administrative equalization technique which suppressed inflation reflected in the value formula's average[10]) is discredited by the numbers in Appendix H in the Jurisdictional Statement as well as a perusal of Peo. Ex. 112, the 1949 memorandum of the Director's railroad assessor, Lynn A. Stiles, an economist. Appellees' rationalization is further undermined by the published report of the economist and railroad property valuation expert, John A. Gronouski, Jr.:

"In deriving a single valuation figure on the basis of evidence employed, the states are divided between the use of a formulaic and a judgment approach. Illinois, for example, takes a simple average of reproduction cost depreciated, capitalized earnings, and

[10] In a non-constitutional case, the Supreme Court of Illinois rejected the exercise of administrative judgment which suppressed inflation in determining the value of telephone company property for rate making purposes. *Ill. Bell Tel. Co. v. Ill. Com. Co.*, 414 Ill. 275, 288, 290 (1951).

stock and debt value." **The Taxation of Utilities, Michigan Tax Study (Staff Papers) 306 (1958).**

Appellees' rationalization of the "judgment factor" also conflicts with testimony of the Director of Revenue:

> "As I said before, for 1961 and 1962, we determined what we thought, **in order to hold the line, a** full, and **assessed** value for all railroads in the State of Illinois . . . in 1961 . . . the judgment factor was varied in the railroads so as to arrive at a billion thirty-two million. In 1962 we determined the overall value to be 990 some million, and again we varied the judgment factor for the railroads to arrive at some 990 some million . . . Well, that was the easiest way out . . . **Keep it about the same as it was the year before . . . my thoughts had nothing to do with how much the railroads were earning or what their earnings should be, could be . . . If I am going to be truthful, it was an arbitrary assessment decision** [to reduce industry assessment 4%]." VI Test. 1072-73, 1086, 1090, 1091, 1095.

On June 15, 1963, a Commission on Revenue appointed by the state legislature transmitted a now published Report to the Governor. Chapter XIV of this Report, entitled "State Equalization of Local Assessments," written by Dr. H. K. Allen, contained this statement, "No criticism of the personnel of the Department of Revenue is intended. The Department has on its staff many highly competent and dedicated individuals. The incumbent Director of Revenue has 'inherited' the present situation from his predecessors."

Appellees present figures and charts, some incomplete, some misleading, in an effort to emphasize downside problems of the railroad industry, 1957-1961, arguing that the "judgment factor" was a value reflection of

such conditions. Appellees omitted Record data revealing an upturn in 1962 and increasing investment in property during and after the 1950's reflecting modernization of plant and equipment and decreasing obsolescence. (Nevertheless, the "judgment factor" reductions increased.) In any event, the downside statistics were already reflected in the capitalized earnings and the stock and debt measures of value. Moreover, the "judgment factor" reductions developed in an earlier period, when upside statistics predominated, *i. e.*, 1950-55. Appellees overlook the fact that this case concerns the value of railroad property—not the value of railroad companies—vis à vis the value of non-railroad property. Expert opinions on the value of Appellees' property, sponsored by the Appellees, simply eliminated inflation and investment from consideration. These experts did not testify about the influence of inflation in the valuation of non-railroad property.

Plenary consideration of the complex Record will confirm that the facts which frame the questions presented are clear and limited in number.

Mr. Justice Holmes has written:

> "When the decision of the question of fact is so interwoven with the decision of the question of constitutional right that one necessarily involves the other, the Federal Court must examine the facts. Otherwise, the right will be a barren one." Frank v. Mangum, 237 U. S. 309, 345, 347-8 (1915) (dissenting opinion).[11]

His observation has been confirmed time and time again as illustrated by the cases cited at "E" at 7 of the Jurisdictional Statement. This appeal involves whether

[11] At 23 Appellees repeat a misquotation of Justice Holmes purportedly concerning valuation of a railroad's property. Compare the quotation with the Justice's text and context at 204 U. S. 598, 636 (1907).

the refunds to the railroads shall be according to the trial court's 1964 judgments, or according to its 1966 judgments as mandated by the Supreme Court of Illinois.

VI. Challenge by a State of the Validity of Action by the Supreme Court of That State Does Not Defeat This Court's Article III Jurisdiction

Appellees' first sentence in the last paragraph at 14 suggests the point that because the State of Illinois, or the executive branch of the State, represented by the Tax Collector and the State's Attorney, assert the invalidity of action by the Supreme Court of Illinois, this case does not come within the Article III jurisdiction of the Court.[12] The underlying argument appears to be that a party cannot challenge itself before this Court.

This point is without merit. "Case and controversy" was found to exist in a dispute between state officials in **Coleman et al. v. Miller, Secretary of the Senate of Kansas, 307 U. S. 433 (1939).** Similarly, "case and controversy" was found to exist in a case where the United States sued itself. "United States v. United States, et al.," cited as **United States v. ICC, 337 U. S. 426, 430 (1949).** There is no reason why the holding in the latter case does not serve to reinforce the holding in the **Coleman** case.

We submit that these cases in which the branches or members of state and federal government were the contending **parties** support our position *a fortiori.* Here there is a "case and controversy" **between the State and the railroads. Alaska v. American Can Co., 385 U. S. 224 (1959)** (jurisdiction to consider argument by Attorney General that legislative enactment as interpreted was, or would be unconstitutional). **Penn. v. Nelson, 350 U. S. 497 (1956).**

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[12] Appellees erroneously added that Appellant challenges action of the Department of Revenue. See n. 3 at 5 *supra.*

STANDING

I. One or More of the State of Illinois, the State's Attorney and the Tax Collector Have Standing to Assert the Constitutional Invalidity of the Action of the Court Below

Appellees' presentation at 13-14 constitutes an argument that Appellant lacks standing to present the constitutional questions. Appellees agree that the State is the Appellant. However, Appellees have erroneously intermingled the argument with certain independent jurisdictional points. We understand that the question of standing does not go to the Court's jurisdiction but only to its exercise. **E. g., Burrows v. Jackson, 346 U. S. 249, 257 (1953).**

Appellees observe that the Fourteenth Amendment creates rights for "persons," *e.g.*, the non-railroad taxpayers of Madison County and Illinois, which protect against discriminatory property taxation resulting from state action. Appellees then move to the *non-sequitur* that because no non-railroad taxpayer in his individual capacity is a party to this case, the Court is without jurisdiction. Even if it is assumed that no non-railroad taxpayer is personally before the Court,[13] Appellees' observation suggests only the question of standing of the Appellant to present the Fourteenth Amendment questions.

We invite the Court's attention to the impressive pocketbook injury sustained by the non-railroad taxpayers in Madison County and throughout Illinois. The action of the Court below requires that the non-railroad taxpayers of Madison County bear a discriminatory share of the tax burden, 1957-62.[14] State assessment of railroad prop-

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[13] The assumption is questionable. The Tax Collector, Mr. John Maeras, *qua* individual, was a property taxpayer in Madison County, 1957-62.

[14] The Court below found railroad property taxed at 100% of full value and non-railroad property at 50% of full value. Therefore

erty as a unit rendered it necessary for the trial court and the Court below to value the state-wide properties of the Appellees in order to determine a level of assessment for Appellees' Madison County properties. Therefore the Supreme Court of Illinois' action controls valuation and the level of assessment of railroad properties in other counties and thereby has served to decrease the railroad's share of the tax burden in other counties.[15] Moreover, the present and future share of the property tax burden borne by the non-railroad taxpayers in Madison County and throughout Illinois is discriminatorily increased by the state action challenged here.[16]

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the Court below ordered refunds to the Appellees amounting to 50% of their taxes. If the Court below had affirmed the trial court's judgments, it would have approved determinations that railroad property was taxed at about 70% of full value, with inflation and investment given *only* one-third weighting; and if the trial court's judgments are taken as the guide, the effect of the 50% refund of railroad property taxes is to tax the railroads' property at 35% of full value for 1957-62, while other property, as the Court found, was taxed at 50% of full value. The deficit in collections vis a vis tax levies must be made up by the non-railroad taxpayers whose property comprises more than 95% of the tax base.

[15] Only after the decision of this case by the Court below, could no one contend that the Supreme Court below has not had all the evidence presented to it with regard to the deflationary function of the "judgment factors." The trial court noted the dearth of evidence on railroad property valuation and assessment in the Records of the predecessor *Hillison* and *Kohorst* cases, as had the Court below. See Jurisdictional Statement A-40 n. 20, A-47. See n. 5a at 10 *supra*.

An aid to understanding the position of the Court below in confronting the illuminating Record in this case, developed by the People in the trial court and taken to the Court below by the railroads, is Cardozo, "A Ministry of Justice," 35 Harv. L. Rev. 113, 115 (1921).

[16] At 29 Appellees state that since 1963 the Director of Revenue, pursuant to legislative command, has been explicitly reducing fair cash value determinations of railroad property to the level of assessment of locally assessed property. Railroad valuations, the railroads assert, are now being reduced 50% to reach the assessment figures. That is because the level of assessment of locally assessed property is being derived by use of the sales ratio studies, which means 100% reliance on inflated prices. Appellees state that there have been practically no discrimination objections by

We also invite the Court's attention to the interest and status of the State, the State's Attorney, and the Tax Collector. Sources of the power and status of the State's representatives are detailed in n. 4 at 4-5 of the Jurisdictional Statement. The State has an interest in the proper functioning of the property tax system, which provides most of the support for local government, including the public schools. In addition, it has an interest in, and a responsibility for, the rights of its People. Indeed, the State is both the creation of and agent for the People. **The State has more than an interest in the application of state constitutional provisions, especially those which can be judicially applied by the State's Judiciary so as to create discrimination violative of the federal constitution.** The State's Attorney, a constitutional officer, stands in the place of the Attorney General, both of whom have concurrent powers at common law to represent the State in matters affected with a public interest and both of whom have concurrent statutory power to represent the State in tax objection proceedings in which action by the State legislature or State executive may be challenged by a taxpayer. The Tax Collector is under a duty to collect the taxes extended by the appropriate officials as the result of action by the State's chief tax administrator, the Director of Revenue. That duty includes the defense of the Director of Revenue's actions in tax objection proceedings. The Tax Collector does not assert the invalidity of state court action as an excuse not to perform the duty of collecting taxes. To the contrary.

We submit that the unique type of proceeding which has produced the federal questions presented is of consequence. The statutory tax objection proceeding does

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the railroads since 1962. But due to the constitutional action of the Court below, the fair cash values of railroad property which are being reduced by the administrator by 50% do not reflect post World War II inflation and increased investment. As a result, state-wide discrimination against non-railroad property taxpayers exists, the fate of which turns on the outcome of this appeal.

not allow for any parties other than the State and the taxpayer who challenges the State's executive or legislative action. Therefore, with regard to discrimination issues, the persons affected by an invalid decision of the State court in the proceeding have no opportunity to assert or vindicate their rights before the State court or this Court. We are aware of no remedy, short of constitutional amendment, by which the non-railroad taxpayers themselves may seek to undo the discrimination against them created by the Court below, which constitutes a "continuing wrong."

A. The Question of Appellant's Standing Is a Matter of State Law and Is Not Open Here

In Illinois the State may act as *parens patriae*. See n. 4 at 5 of Jurisdictional Statement. Indeed, public officials have standing to challenge the constitutionality of state action. **People ex rel. Isaacs v. Johnson, 26 Ill. 2d 268 (1962).** Congress has evidenced the intent that decisions of the highest court of a state involving federal questions shall be reviewed if jurisdictional requirements are met. Article III, § 2, U. S. Constitution; 28 U. S. C., § 1257. We submit that if a State has standing or confers standing on a public official to raise a federal question concerning **state action** in the state courts, then in deference to the intent of Congress and the States, state law on standing should control. The Court below accorded Appellant standing.

Heim v. McCall, 239 U. S. 175, 186-7 (1915);
Doremus v. Board of Education, 342 U. S. 429, 435, 436 (1952). (dissenting opinion).

B. Even if Appellant's Standing Is a Federal Question, It Is Not Open Here

Appellees failed to object to the Appellant's standing in the proceedings below. Appellees did not object to Appellant's standing during the first appeal to this Court.

C. The State of Illinois Has Such an Interest in and Responsibility for the Preservation of the Fourteenth Amendment Rights of Its People Against State Action, That It Has Standing Under the Doctrine of *Parens Patriae* or for Other Reasons

Georgia v. Pa. Rr. Co. et al., 324 U. S. 439, 445-450 (1945);

Massachusetts v. Mellon, 262 U. S. 447, 485 (1923) (*dictum*);

cf. Penn. v. West Virginia, 262 U. S. 553, 564, 583-4 (1922);

cf. Georgia v. Tennessee Copper Co., 206 U. S. 230 (1906);

cf. Kansas v. Colorado, 185 U. S. 125, 142 (1901).

D. Even Though Non-Railroad Taxpayers Are Not Parties to This Appeal, Their Official Representative(s) Have Standing to Assert Their Constitutional Rights

This Court has recognized the standing of officials to assert federal questions, including constitutional ones, even though the interest of the officials does not involve their personal pocketbooks. **U. S. ex rel. Chapman v. FPC, 345 U. S. 153, 155-56 (1953) (Secretary of Interior v. FPC); U. S. v. ICC, 337 U. S. 426 (1949)** (the United States and its Attorney General); **Alaska v. American Can Co., 358 U. S. 224 (1959)** (Alaska and its Attorney General); **State Tax Com. v. Aldrich, 316 U. S. 174 (1942)** (*semble*); **Coleman v. Miller, 307 U. S. 433 (1938)** (semble); see **Coleman v. Miller** *supra* **at 433, 442-45 (1938).**

Appellees' principal reliance is on **Columbus & Greenville Rr. Co. v. Miller, 283 U. S. 96, 100 (1931)**, which is distinguishable. There, the Mississippi Tax Collector, acting for the Mississippi Levee District, not, as here, for the State, asserted the invalidity of legislation as an excuse **not** to collect the amount of taxes prescribed by the statute in question. Thus, in **Miller**, the Tax Collector chal-

lenged action of his creator, the legislature. *Id.* at 99. Here, the Tax Collector asserts the invalidity of judicial action in the discharge of his duty to collect taxes. It is of significance that in **Miller** the Tax Collector acted without the participation of a legal officer of the State. Here, the situation differs. Indeed, **Miller** is traceable to earlier cases in which the State, represented by the Attorney General, was opposing the official asserting the invalidity of the legislative action.

E. Representative Parties With Less Than Pocketbook Interest Have Standing to Assert the Rights of Others

For example, a private school had standing to assert here that state action violated the rights of parents, none of whom were before the Court. **Pierce v. Society of Sisters, 268 U. S. 510, 534-35 (1925); NAACP v. Alabama, 357 U. S. 449, 458-60 (1958)** (organization has standing to assert rights of its members).

F. Reasons Which Underlie the Court's Rule of Standing Are Outweighed by the Need to Protect Fundamental Rights of the People of Illinois

In **Barrows v. Jackson, 346 U. S. 249, 253, 257 (1953)**, a Caucasian was allowed to assert constitutional rights of non-Caucasians not before the Court. There, the state action challenged was **judicial.** In recognizing standing, the Court stated,

> "But in the instant case, we are faced with a unique situation in which it is the action of the state *court* which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any Court. Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the funda-

mental rights which would be denied by permitting the damages action to be maintained." (Emphasis not added.)

G. The State Has Standing as Proprietor and Operator of Various Institutions of Government

Georgia v. Pa. Rr. Co., et al., 324 U. S. 439, 445-50 (1945). The State of Illinois as proprietor has been injured. The practical effect of the action of the Court below is to deprive the State of revenue. There is an upper limit on the property tax burden which the People will accept. To superimpose on this burden taxes which the railroads should pay will cause that upper limit to be reached sooner than if the railroads pay their proper share—if that upper limit has not been reached or passed already.

CONCLUSION

For the foregoing reasons, we pray the Court to note probable jurisdiction.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 670.

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MARRAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTH-WESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. Co., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois.

APPELLANT'S PETITION FOR REHEARING.

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Appellees.

On Appeal from the Supreme Court of Illinois.

APPELLANT'S PETITION FOR REHEARING.

Comes now the State of Illinois ex rel. the Tax Collector of Madison County by the State's Attorney of Madison County and respectfully petitions the Court to grant a rehearing of the decision rendered on December 18, 1967, by which the Court dismissed this appeal for want of jurisdiction and treating the papers as a petition for a writ of certiorari denied a writ.

The property tax refunds ordered by the state court were made to the railroads in 1966 in order to stop the accural of interest. Rehearing thus will not delay implementation of the judgments below.

Appellant's showing of jurisdiction was made at 3-10 of its Brief in Opposition to Appellees' Motion to Dismiss or Affirm filed on December 11, 1967 and at 3-24 of its Jurisdictional Statement filed on September 30, 1967. As of January 9, 1968, no decision had been rendered by the 6th Circuit Court of Appeals in **L & N Rr. Co. v. Pub. Serv. Com. of Tenn., et al., 249 F. Supp. 894 (M. D. Tenn. 1966)**, *appeal docketed* April 4, 1966.

Respectfully submitted,

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Certificate

Burton C. Bernard, one of counsel for the Appellant, does hereby certify that this Petition is presented in good faith and not for delay.

/s/ Burton C. Bernard

January 10, 1968.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

ILLINOIS EX REL. MAERAS, TREASURER & EX-OFFICIO COLLECTOR ETC. *v.* CHICAGO, BURLINGTON & QUINCY R. CO. ET AL.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 670. Decided December 18, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.